



## Final Technical Report

### African Copyright & Access to Knowledge (ACA2K) Project 2007-2011

[www.aca2k.org](http://www.aca2k.org)

By Chris Armstrong

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**Abstract:**

This ACA2K project Final Technical Report to the IDRC outlines the project's objectives, methodology, activities, outputs, outcomes, overall assessment and recommendations. The planning, research, dissemination and policy engagement activities outlined herein occurred over a four-year period from October 2007 to September 2011 in eight African countries -- Egypt, Ghana, Kenya, Morocco, Mozambique, Senegal, South Africa and Uganda – with the researchers in these eight study countries supported by consultants and partners in South Africa, Kenya, Canada, the US, Switzerland, India and Malaysia. The starting point for the project was a vision of a future copyright environment throughout Africa that maximises access to the knowledge contained in learning materials. To this end, the project developed a network of African researchers empowered to assess copyright's impact on access to learning materials in their countries and to use the evidence to support the contributions of African stakeholders in national, regional and international copyright policymaking. As well as generating significant new research evidence and making that evidence known and available to policymaking stakeholders in the study countries and internationally, the project was successful in building and networking the capacity of African researchers working on copyright matters, developing methodological best practices for this kind of research, increasing the amount of published scholarship addressing this topic, and generally raising awareness of the interface between copyright and access to knowledge in the eight study countries.

**Keywords:**

Copyright, Access to Knowledge, A2K, Africa, Access to Learning Materials, Education, IDRC, LINK Centre, Shuttleworth Foundation

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## Introduction

The African Copyright and Access to Knowledge (ACA2K) project, from 2007 to 2011, probed the relationship in eight African countries between national copyright environments and access to learning materials. The project investigated this relationship within an access to knowledge (A2K) framework – a rights-based framework which regards the protection and promotion of user access as among the central objectives of copyright law.

This project was supported by the IDRC Acacia Programme and the Shuttleworth Foundation, and managed by the LINK Centre at the University of the Witwatersrand (Wits University) in Johannesburg.

The research took place in Egypt, Ghana, Kenya, Morocco, Mozambique, Senegal, South Africa and Uganda. These countries provided the study with a variety of socio-political, historical and legal contexts in which to pose the research questions.

Following conclusion of the research, dissemination and policy engagement based on the research findings took place in each of the study countries, as well as at conferences, seminars, workshops and high-level meetings at African regional and international levels, including the World Intellectual Property Organisation (WIPO) in Geneva.

This report aims to describe the rationale, research problem and objectives that underpinned the intentional design of the project, and to describe the project's activities, outputs, outcomes observed and lessons learned.

All of the project's key methodology, research, dissemination and policy engagement outputs, as described in this report, are available on the project website at [www.aca2k.org](http://www.aca2k.org).

## 1. The Research Problem

The conceptual starting point for the ACA2K project was the development imperative, of particular urgency in Africa, of educational attainment, with improved higher education systems seen as central to African countries' pursuit of development goals. From this starting point, it is clear that ensuring adequate and equitable access to learning materials needs to be a priority in African countries – a fact that is acknowledged by the continent's governments, African regional organisations, and international organisations such as the United Nations Educational, Scientific and Cultural Organisation (UNESCO).

Hard-copy books are still central to education systems worldwide, including Africa. But as information and communication technologies (ICTs) gradually proliferate, a shift from hard-copy to digital learning materials is occurring. For African countries, as the authors of the opening chapter of the ACA2K project book, *Access to knowledge in Africa: the role of copyright*, put it:

Technology can have a transformative effect on entire systems of education and on individual teachers and learners within those systems. ICTs are potentially democratising, facilitating provision of education to people and communities that are currently marginalised, whether due to gender, ethnicity, socioeconomic class, remoteness or other factors. They can help to overcome physical infrastructure challenges that pose barriers to the acquisition of learning tools and can open access to knowledge that was previously unobtainable.

There is reason to worry, however, that as some barriers to education fall, others may remain, or new barriers may arise. Specifically, it is essential to ensure that legal and policy frameworks are well suited to capitalise on, indeed catalyse, opportunities to improve the future of education in Africa. In this respect, copyright environments—consisting of laws, policies and practices—are one significant determinant of access to learning materials and therefore a key component of education systems as a whole.<sup>1</sup>

Accordingly, the ACA2K project was guided by the following long-term **vision**, as agreed at the project's January 2008 Methodology Workshop:

- a copyright environment throughout Africa that maximises access to the knowledge contained in learning materials.

It was felt that movement towards this vision would require a strategy combining both research and dissemination/policy engagement, and that the project's '**mission**' should thus be:

- to develop a network of African researchers empowered to assess copyright's impact on access to learning materials and to use the evidence generated to support African stakeholder contribution to copyright policymaking.

There was a conviction by the project's initiators that the existing scholarly outputs in the area of copyright's intersection with access to education/learning/knowledge in Africa had come predominantly from a formal legal perspective, eg, reports focusing on the technicalities of copyright exceptions and limitations. It was believed that the ACA2K project could, and should, fill the research gap by going beyond the parameters of the existing body of work to investigate actual practices 'on

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<sup>1</sup> Armstrong, C, De Beer, J, Kawooya, D, Prabhala, A and Schonwetter, T (eds) *Access to knowledge in Africa: the role copyright* (2010) UCT Press, Cape Town, in association with IDRC, Shuttleworth Foundation and Wits University LINK Centre. Available at <http://www.aca2k.org/research.html> [Accessed 30 September 2011].

the ground’ pertaining to copyright and access in Africa. To gather this kind of empirical evidence, as is outlined in the ‘Methodology’ section later in this report, the project combined legal doctrinal analysis with methods borrowed from non-legal social sciences.

It was concluded that the overarching **research question/problem** tackled by the ACA2K **Research Component** should be:

- To what extent is copyright fulfilling the objective of facilitating access to knowledge (A2K) in the study countries?

It was also decided that ‘access to learning materials’ should be used to serve as a proxy for A2K, and that the **specific research questions** should be:

- What is the state of a country’s copyright environment and the state of access to learning materials within, and as impacted by, that environment?
  - What are the exceptions, limitations or other legal means provided for by the national copyright laws for learning and research?
  - How are the relevant stakeholders in the country using and interpreting exceptions, limitations or other legal means to increase access to learning materials?
  - Are there gender dynamics at play in the interpretation of copyright exceptions, limitations and other legal instruments/dynamics in a country? If there are gender dynamics, how do they play out in the copyright environment, specifically in terms of access to learning materials?
  - What are the actual experiences of learning stakeholders in terms of accessing learning materials?
  - Is there any case law in the context of copyright and learning?
  - Which are the key stakeholder groupings in the country’s copyright context, and to what extent do they affect (or get affected by) the copyright environment?
  - What role does access to information and communication technologies (ICT) play, as part of the copyright environment, in promoting or hindering access? Which materials are affected and how?
- What are the processes, political, legal, social and/or technical, that could positively impact a country’s copyright environment in terms of access to learning materials?
- What might the country’s optimal copyright environment look like?

The research thus examined how particular provisions of a country’s copyright legislation could have the potential to limit or prohibit access to learning materials, and examined the potential inadequacies of existing exceptions and limitations in national laws. However, access to learning materials is never only a question of having appropriate exceptions, limitations and other flexibilities; it is also a question of the actual deployment of these flexibilities, ie, whether or not the exclusive rights granted to copyright-holders are being effectively balanced through the deployment of flexibilities, and whether or not users are interpreting and/or utilising flexibilities in an access-enabling manner. And that is why, as shall be seen in the ‘Methodology’ section below, a mix of doctrinal analysis and semi-structured interviewing was adopted – a mix of qualitative methods aimed at uncovering each country’s copyright ‘environment,’ ie, the mix of legal and practical/experiential dynamics at play in relation to copyright and access in each country.

The research questions were underpinned by **hypotheses** (though the purpose was not to pre-judge the outcome of the research, but to objectively test the validity of particular statements or positions). The hypotheses chosen for testing were:

- copyright environments in the study countries do not allow maximal access to learning materials; and



- copyright environments in the study countries can be changed to maximise effective access to learning materials.

(As is described later in this report, evidence was found, via the research, to support both of these hypotheses.)

The ACA2K *Methodology guide* of 2008<sup>2</sup> called for the research problem, research questions and hypotheses to be interrogated in terms of the following ‘constituent parts’ of national copyright environments and learning materials access dynamics.

**Figure 1: Constituent Parts**

<p><b>National copyright environment</b></p> <p>Policies, statutes, regulations, case stakeholder/institutional dynamics, stakeholder experiences of access to learning materials</p>
<p><b>Access to learning materials</b></p> <p>Socioeconomic conditions of learners and learning sites, including gender dynamics; access dynamics in relation to learning materials; access to information and communication technology relevant to learning materials access</p>

**Source: ACA2K Methodology guide 2008**

And, as already mentioned, it was decided that a mix of doctrinal and interview methods would be necessary in order to examine the constituent elements outlined in Figure 1 above.

In order to have a reasonable chance of making some progress towards the vision and mission adopted by the project, it was also necessary to have, in addition to the Research Component, a **Dissemination & Policy Engagement Component**. This component, as stated in the *Methodology guide*, was based on the premise that ‘[t]he ACA2K project aims for its research outputs to reach relevant policymakers and encourage incremental policy changes.’<sup>3</sup> At international level, the *Methodology guide* said:

Every effort will be made to ensure that the ACA2K research findings find their way, via civil society actors and government missions in Geneva, into the World Intellectual Property Organisation (WIPO) Development Agenda talks aimed at fostering a more development-oriented approach to copyright and other intellectual property rights (IPRs). As well, ACA2K research findings will be fed into international publications, and into the international online arena via the project website, [www.aca2k.org](http://www.aca2k.org).<sup>4</sup>

At national level, the *Methodology guide* called for the focus of policy engagement to be the convening of a ‘National Policy Dialogue Seminar’ in each ACA2K study country, whereby learning materials stakeholders and policymaking stakeholders would be introduced to the ACA2K research findings and recommendations for that country.

The final piece of the project’s ‘intentional design’ puzzle was the choice of a framework that would lend itself to monitoring the degree to which the project’s interactions with stakeholders were able to

<sup>2</sup> ACA2K *Methodology guide* (2008) ACA2K project, IDRC, Shuttleworth Foundation and Wits University LINK Centre. Available (in English, French, Portuguese, Arabic) at <http://www.aca2k.org/research.html> [Accessed 30 September 2011].

<sup>3</sup> Ibid at 28.

<sup>4</sup> Ibid.

generate the short-term sparks necessary for, in the longer-term, changes within national and/or international copyright policymaking spaces. The monitoring framework chosen was outcome mapping (OM), because, as outlined in the introductory chapter of the ACA2K book:

The technique of outcome mapping consciously avoids claiming credit for results that are in truth attributable to a combination of interrelated variables, only some of which, if any, can be linked back to a particular project's activities. Consequently, the technique of outcome mapping focuses on monitoring gradual, incremental change in behaviour by individuals and institutions and on monitoring a particular project's small or large contributions to such change. Assessments map dynamic "outcomes", rather than more static "outputs". Moreover, because the changes that matter most in a development context are those that better people's daily lives, take a long time to happen and depend on human behaviour, outcome mapping is most concerned with assessing changes in behaviour, rather than focusing on possible changes in state.<sup>5</sup>

Looking back on the four years of the project, it seems fair to say that the researchers' understanding of the research 'problem' (the intersection of copyright and access), the project rationale (filling an important research gap), the project's conceptual framing (within a rights-based A2K framework), and the project's approach to monitoring change (the OM approach) remained quite constant throughout. This constancy can perhaps be attributed to the fact that the research results that arose during the Research Component of the project proved to be compelling in the eyes of the researchers involved, and because, during the subsequent Dissemination & Policy Engagement Component, the researchers encountered widespread interest in, and support for, the research orientation -- ie, the 'problem' definition adopted by the project -- among stakeholders at national, African regional and international/global levels.

More shall be said below on the activities, outputs and outcomes of the Research Component and Dissemination & Policy Engagement Component as they unfolded within the conceptual framework that has been outlined in this section. And more shall be said below about deployment of the OM monitoring framework.

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<sup>5</sup> Armstrong et al (eds) supra note 5 at 13, citing Earl, S, Carden, F and Smutylo, T *Outcome mapping: building learning and reflection into development programs* (2001) International Development Research Centre (IDRC), Ottawa. Available at [http://www.idrc.ca/en/ev-9330-201-1-DO\\_TOPIC.html](http://www.idrc.ca/en/ev-9330-201-1-DO_TOPIC.html) [Accessed 1 November 2009].

## 2. Objectives

The **general objective** of the ACA2K project, as agreed between the IDRC, the Shuttleworth Foundation and the project team at the project's inception in October 2007, was:

- to **build the capacity** in Africa to research and better understand the nature of a copyright environment that would facilitate citizen's access to digital and hard-copy learning materials – in order to **build the evidence** necessary for stakeholders in ACA2K study countries to pursue development of a copyright climate that maximises the opportunities for learners and learning sites to access to hard-copy and digital learning materials, via offline and ICT-based platforms.

It was agreed that this general objective was to be tackled by convening research teams in several African countries and empowering/deploying the teams to analyse the extent to which their national copyright acts and regulations were taking advantage of limitations and exceptions available in terms of international treaties; to try to understand how learners and learning sites interact with existing copyright environments; and to investigate whether there are legal reforms or policy changes that could improve citizen access to hard-copy and digital learning materials.

The original agreement was for the research to take place in five countries (Egypt, Ghana, Senegal, South Africa, Uganda), and three more were added in early 2008 (Kenya, Morocco, Mozambique), giving the project a total of eight study countries.

The **specific objectives** (within the general objective) agreed to initially, in October 2007, were:

- to build research capacity in Africa on the issue of copyright and access to knowledge and learning materials;
- to **improve understanding** of the interaction between the copyright environment in Africa and access to hard-copy and digital learning materials;
- to **determine the statutory and regulatory provisions** that would promote access to hard-copy and digital learning materials;
- to **provide policymakers and advocates in Africa with evidence** to support their positions at international negotiations for a copyright environment that fosters access to knowledge
- to **raise awareness among policymakers** of how copyright can have an impact on access to knowledge, learning materials in particular;
- to **participate in national, regional and international debates** discussing the subject area, particularly in situations where the study countries are reforming their copyright legislation;
- to **develop a methodology** guide and disseminate it widely to encourage other African researchers to build on it and use it for their own research interest; and
- to **promote knowledge and encourage discussion** in Africa around access to learning materials and copyright.

During the Methodology Phase in late 2007 and early 2008, which included the January 2008 Methodology Workshop in Johannesburg and resulted in the finalisation of the ACA2K *Methodology guide* in April 2008, the phrasing of the project's objectives was refined somewhat, with the *Methodology guide* specifying the following:

ACA2K's overall objective is:

To document the evidence around the interaction between copyright environments and access to learning materials and to enable stakeholders in study countries to pursue the attainment of copyright environments that maximise access to knowledge for all.

ACA2K's specific objectives are:

- to build and network the research capacity of African scholars to examine copyright environments and access to learning materials (across all formats) within and across

- countries;
- to build research and methodological best practices in African countries around the relationship between copyright environments and access to learning materials;
- to increase the corpus of published evidence -- both research reports and academic peer-reviewed publications -- on the relationship between copyright environments and access to learning materials;
- to build awareness and conduct policy advocacy around copyright in relation to access to learning materials and access to knowledge in Africa. Targeted stakeholders include (but are not limited to): government officials; legislators, policy advisors, civil society actors, libraries, publishers, schools, educators; and
- to build awareness and policy advocacy capacity in universities and related institutions of higher learning on the impact of copyright on scholarly and research environments in their institutions, with specific reference to access to learning materials and access to knowledge.<sup>6</sup>

The key additional objectives we can see in this passage in the *Methodology guide*, as agreed to by all project participants, were to 'network' research capacity in Africa in the specialist research areas of the project, and to 'increase the corpus of published evidence.' In all other respects, the *Methodology guide* was re-stating the initial objectives agreed to with the IDRC and Shuttleworth Foundation in October 2007.

## 2.1 Achievement of Objectives

In order to reflect on the extent to which the objectives established by the project in late 2007 and early 2008 were subsequently achieved, it can be useful to group the objectives into three sets:

- **Building capacity** -- of researchers, of learning materials stakeholders, of policymakers:
- **Generating and deploying evidence** -- for academic publication, for use by stakeholders/policymakers: and
- **Raising awareness and participating in discussion/debate** -- in national, regional and international fora.

### *Building Capacity*

As shall become clear in the 'Project Outcomes' section of this report, there is evidence to suggest that a great deal of capacity-building of researchers (and their institutions) was achieved by the project -- and some degree of capacity-building among learning materials stakeholders and policymakers was also detected.

### *Generating & Deploying Evidence*

The sections below will also show that many high-quality, evidence-based research, dissemination and policy engagement outputs were achieved by the project, and that these evidence-based outputs generated some meaningful outcomes at both national and international levels.

### *Raising Awareness and Participating in Discussion/Debate*

We shall see in the sections below that the ACA2K project generated some significant awareness -- of the project, the project's findings, and the project's recommendations -- at national, regional and international fora of several different kinds.

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<sup>6</sup> ACA2K supra note 2 at 8.

## 2.2 Emergent Objectives

The project can also be said to have developed some new, emergent objectives over its four years from October 2007 to 2011 – objectives not initially proposed but which emerged in the course of the project.

For instance, it was decided that efforts should be made to influence the content **of formal university curricula**, and this was achieved at the University of Ottawa. Another emergent objective was the push, in 2009, to interact directly with members of not just one, but two, crucial **official standing committees at WIPO**: the WIPO Standing Committee on Copyright and Related Rights (SCCR) and the WIPO Committee on Development and Intellectual Property (CDIP). As shall be described below, ACA2K managed to make significant contact with members of the SCCR, whereas the project's original plan was to focus primarily on the CDIP.

### 3. Methodology

The ACA2K project framed the notion of a national ‘copyright environment’ as an environment encompassing not only laws/regulations/policies but also practices. Consequently, ACA2K’s methodology had three prongs: 1) a **doctrinal review**, in each country, of the legal elements of the country’s copyright and access framework; 2) a **secondary literature review** and **semi-structured interviews** in each country to probe the practical perceptions of, interpretations of, and/or interactions with, the law; and 3) **comparative analysis** of the findings across the eight study countries. For each of the methods, ‘access to learning materials’ was the organising theme.

The **doctrinal review** involved a critical legal analysis of each country’s relevant statutes, regulations, and judicial and administrative decisions. It was concerned with understanding what the national copyright laws in the study countries stipulate in relation to access to learning materials. It also entailed the analysis of the judicial and administrative decisions related to copyright and learning materials, including the case law, where applicable.

After the review of relevant **secondary literature** in each country, the **impact assessment interviews** in each country were meant to reveal the ‘intended and actual’ consequences of the copyright law. The interviews enabled ACA2K researchers to get the views of not just experts and commentators but also ordinary users of the law and/or learning materials. The doctrinal and interview aspects of the methodology and analysis were inextricably linked. Generally, interview participants were selected to represent a diversity of perspectives on the copyright and access situations in the study countries. The main interviewee categories were:

- the government department(s) responsible for setting national copyright policies and/or drafting copyright legislation;
- educational communities and users (recognising that education communities can be creators and/or holders of copyright); and
- copyright-holders (including collective societies or industry associations).

The **comparative review** probed the differences and similarities, across the eight countries, among the doctrinal, literature and impact assessment interview findings.

The ACA2K methodology can be examined in more detail via the online **ACA2K Methodology guide**,<sup>7</sup> under ‘Research Outputs’ on the ACA2K website, [www.aca2k.org](http://www.aca2k.org)

#### 3.1 Methodological Lessons Learned

One difficulty that developed was in the project’s attempts to interrogate **gender** dynamics through the impact assessment interviewing. The gender dynamics at the intersection between copyright and learning materials access proved to be difficult to determine beyond anecdotal responses from interviewees, and most of the researchers lacked some of the specific skills needed for qualitative interviewing on gender matters. One clear learning from the project was that researchers require specific skills, and training – eg, training in ‘depth interviewing’ and focus group interviewing -- if they are to be expected to meaningfully investigate gender dynamics in a qualitative fashion.

As well, the researchers who were lawyers by training had to adjust to the practice of conducting semi-structured research interviews, an exercise that was less natural for them than the doctrinal review component.

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<sup>7</sup> ACA2K supra note 2.

In general, however, the project found that the combination of doctrinal and interview methods proved effective in generating the data necessary to draw conclusions regarding the core focus of the project: the nature of the copyright environments, in relation to access to learning materials, in the eight countries.

## 4. Project Activities

The project activities took place within three linked, and overlapping, components:

- Methodology Phase
- Research Component
- Dissemination & Policy Engagement Component

### 4.1 Methodology Phase (Oct. 2007 to May 2008)

**2007**

#### *Project set-up*

- recruitment of ACA2K Principal Investigators, Consultants, Advisors, Project Coordinator and five country research teams
- establishment of contracting and financial administration protocols between Wits LINK Centre and Wits Enterprise
- establishment of ACA2K Listserv for internal communication among project members

#### *Initial Country Scans*

- preparation of Initial Country Scan documents on the copyright environment in five study countries (Egypt, Ghana, Senegal, South Africa, Uganda)

**2008**

#### *Project expansion*

- recruitment of three additional country research teams (for Kenya, Morocco, Mozambique), augmentation of research focus on gender, expansion scope of dissemination and policy dialogue plans

#### *Methodology Workshop, January 2008, Johannesburg*

- review of work already undertaken in 5 study countries
- review of outcomes of online discussion of methodology
- preparation of draft Methodology Guide
- introduction to Outcome Mapping (OM) for project intentional design and monitoring

#### *Methodology guide*

- finalised April 2008, published online on ACA2K website late April 2008

#### *Data collection tools*

- Interview guides and Informed Consent procedures drafted May 2008

#### *Project intentional design using OM*

- country teams develop their country OM plans, consisting of a boundary partner map, outcome journal templates, strategy map.
- Research Manager and Project Coordinator develop a central/network OM plan, consisting of a boundary partner map, outcome journals, strategy map

### 4.2 Research Component (May 2008 to Dec. 2009)

**2008**

#### *Research set-up*

- distribution of finalised *Methodology guide* to project members, via ACA2K Listserv
- courier delivery of MP3 audio field recorders, for recording of research interviews, to each research team

#### *Data collection*

- Interview Guides and Informed Consent procedures finalised, May 2008
- Data collection begins, June 2008



- country data collection support visits to all eight study countries by Principal Investigators Kawooya and De Beer, August-September 2008

*Management meeting, August 2008, Cape Town*

- attended by Principal Investigators, Research Manager, Project Coordinator, OM Consultant, SA research team, Shuttleworth Foundation
- decision-making on data collection in the eight study countries format for draft Country Reports due Nov 2008, format for country Executive Policy Briefs due early 2009, gender strategy and hiring of ACA2K Gender Consultant, staging of Mid-Project Workshop January 2009 in Cairo; OM progress in study countries; development of website, brochure, business cards

*Gender strategy*

- draft strategy document developed
- Nairobi-based ACA2K Gender Consultant recruited
- ACA2K researchers from Kenya and SA attend IDRC gender research workshop, Johannesburg

*Dissemination of methodology*

- Principal Investigator Prof. de Beer of University of Ottawa arranges for a University of Ottawa student, a Zimbabwean national, to deploy the ACA2K methodology in relation to the Zimbabwean copyright environment as part of his studies

*Draft Country Reports*

- Draft Country Report documents submitted November-December 2008, and initial feedback provided December 2008 to researchers by Principal Investigators and Consultants

*Management meeting, December 2008, Johannesburg*

- attended by Principal Investigators, Research Manager, Project Coordinator, OM Consultant
- decision-making on January 2009 Cairo workshop agenda, content of Cairo workshop presentations, format for country Executive Policy Briefs due early 2009

**2009**

*Mid-Project Workshop, January 2009, Cairo*

- engagement with draft Country Reports, planning of national Executive Policy Briefs, briefing on TRIPs flexibilities in relation to copyright, briefing on ICT themes for possible inclusion in Country Reports and Executive Policy Briefs; briefing on possible gender dynamics to be covered in research reports; briefing on strategies for 'communicating and influence'; refinement of national Outcome Mapping monitoring frameworks (boundary partners, progress markers, strategy maps, OM journaling format), planning for National Policy Dialogue Seminars

*Online collaboration*

- development of non-public, password-protected Team Space section of website, [www.aca2k.org](http://www.aca2k.org), for sharing of internal project documents

*Gender strategy*

- development of ACA2K & Gender Guidelines by Gender Consultant, Kenya researcher Marisella Ouma and Research Manager (finalised March 2009)

*Writing/editing meeting, April 2009, Johannesburg*

- attended by Principal Investigators and Research Manager
- writing of Geneva Briefing Paper 1, polishing of Country Reports and provision of feedback to teams, finalisation of DTP cover designs for ACA2K publications; refinement of ACA2K Publications Style Guide

*Planning/briefing meeting, Ottawa, May 2009*

- attended by Principal Investigators Kawooya and de Beer in Ottawa -- planning of

qualitative components of Comparative Review; briefing on ACA2K to IDRC Head Office  
*Final Country Reports and Executive Policy Briefs*

- Eight Country Reports and eight Executive Policy Briefs finalised, copy-edited, DTPd, printed and published online, June to December 2009

*Management meeting, Johannesburg, June 2009*

- Attended by Principal Investigators, Research Manager, Project Coordinator
- planning finalisation of country reports (Country Reviews and Executive Policy Briefs); planning of copy-editing of country reports; planning ACA2K book in English and French; drafting of Comparative Review outline; planning of contributions to APC-Hivos *Global information society (GIS) watch 2009* publication, and to *African Journal of Information and Communication (AJIC)*; planning of ACA2K Geneva WIPO engagement in Nov. and Dec. 2009 with IQsensato; provision of project status briefing to representatives of LINK Centre, IDRC, Shuttleworth Foundation

*Draft Comparative Review*

- Comparative Review document, on findings across the eight study countries, drafted November-December 2009 by Principal Investigators and Consultants

## 2010

*ACA2K book*

- entitled *Access to knowledge in Africa: the role of copyright*
- manuscript submitted to UCT Press, Cape Town, January 2010
- peer review February-March 2010, final editing April 2010, copy-editing May 2010, proof-reading June 2010
- publishing/printing by UCT Press, Cape Town, July-August 2010
- online open access publishing of book by IDRC, August 2010, <http://web.idrc.ca/openebooks/490-1/>

*Development of ACA2K follow-on project (Open A.I.R.)*

- new research agenda outlined in ACA2K document entitled *Future directions for African IP research: a scoping document*, by Tobias Schonwetter and Jeremy de Beer, Sept. 2010 (internal, non-public)
- follow-on project, the Open African Innovation Research and Training (Open AIR) network, approved for funding by IDRC and GIZ/BMZ, November 2010

## 2011

*ACA2K French-language book development*

- entitled *L'accès au savoir en Afrique : le rôle du droit d'auteur*
- English-language manuscript submitted to Laval University Press, Quebec City, January 2011
- Translation into French February to May 2011, proof-reading September to October 2011
- Printing/publishing/distribution by Laval University Press (forthcoming, November-December 2011)

*Launch of ACA2K-follow-on project (Open A.I.R.)*

- Open African Innovation Research and Training (Open A.I.R.) network, managed by UCT IP Law and Policy Research Unit, launched May 2011 in Cape Town
- Open A.I.R. network includes ACA2K's Principal Investigators and members of the ACA2K research teams in Egypt, Ghana, Kenya, Mozambique, South Africa and Uganda

## 4.3 Dissemination & Policy Engagement Component (April 2008 to Sept. 2011)

### 2008

*Strategy*

- development of draft ACA2K Strategy for Influence and Change (internal)

### *Branding*

- design of ACA2K logo (April 2008)
- ACA2K brochure developed, and printed in 4 languages (English, French, Portuguese, Arabic)

### *Website*

- design and development of ACA2K website, at [www.aca2k.org](http://www.aca2k.org), in both English and French
- website launched in April 2008, on World Intellectual Property Day, accompanied by a media release distributed online in English, French, Portuguese and Arabic
- translation of Methodology guide into French, Portuguese and Arabic for posting on website

### *Public conference/seminar presentations*

- eLearning Africa, May 2008, Accra
- Commonwealth of Learning PCF5 conference, July 2008, London
- IFLA World Congress, August 2008, Quebec City
- Yale A2K3, Sept. 2008, Geneva

### *Workshop presentations*

- IDRC Acacia networks workshop, March 2008, Johannesburg
- Wits P&DM research seminar, October 2008, Johannesburg
- IDRC Communication for Influence workshop, November 2008, Hyderabad

### *Media coverage of ACA2K*

- ACA2K online launch, 26 April 2008 World Intellectual Property Day, via emailed 25 April Media Release
- covered by ITWeb South Africa, Incommunicado listserv, A2k listserv, APC online news, Afro-IP blog, Development Gateway online news, Peter Suber's online Open Access News, UW-Milwaukee online news, Wikieducator, LIRNE.NET, Law Favorites online news, Pambazuka News, Michael Geist blog, Moneyweb South Africa

## **2009**

### *Strategy*

- revision of *ACA2K network strategy for influence & change* document (internal, non-public)

### *Branding/design*

- finalisation of brochure design in four languages (Eng, Fr, Portuguese, Arabic); finalisation of business card design featuring four languages; design of covers/formats for DTPs of Methodology Guide, Country Reports, Executive Policy Briefs, Comparative Review

### *Website*

- continued design and development of public elements of website, [www.aca2k.org](http://www.aca2k.org), with pointing from [www.d2asa.org](http://www.d2asa.org) for users accessing project via French acronym D2ASA; improved News space; extensive blogging from Policy & Dissemination advisor Denise Nicholson

### *Partnership development*

- Geneva WIPO advocacy partnership with IQsensato, agreed March 2009
- African access stakeholders advocacy partnership with Consumers International, agreed May 2009

### *Management meeting, Dakar, October 2009*

- attended by Principal Investigators and Research Manager
- further development of Comparative Review; finalisation of publishing agreement with UCT Press; strategising for Nov. 2009 and Dec. 2009 interventions, with IQsensato, WIPO in Geneva

### *Management meetings, Johannesburg, November 2009*

- by Lead Researcher and Research Manager with Dissemination and Policy Engagement Advisor and with OM Consultant

#### *Gender-focussed follow-up interviews, Nairobi*

- conducted by ACA2K Kenya research team, March 2009

#### *ACA2K publications*

- Eight Country Reports and eight Executive Policy Briefs copy-edited, DTPd, printed, distributed offline and published online, June to December 2009
- Three ACA2K WIPO Briefing papers, DTPd, printed, distributed offline and published online, April to December 2009

#### *ACA2K contributions to other publications*

- De Beer, J 'Intellectual property rights' in *Global information society watch 2009* (2009) Association for Progressive Communications (APC) and Humanist Institute for Cooperation with Developing Countries (Hivos), Johannesburg.
- Schonwetter, T, De Beer, J, Kawooya, D and Prabhala, A 'Copyright and education: lessons on African copyright and access to knowledge' (2009) 10 *African Journal of Information and Communication* 37-52. Available at <http://link.wits.ac.za/journal/AJIC10-Schonwetter.pdf> [Accessed 1 February 2010].
- Prabhala, A 'Introduction to online information and knowledge – advancing human rights and democracy' in *Global information society watch 2009* (2009) Association for Progressive Communications (APC) and Humanist Institute for Cooperation with Developing Countries (Hivos), Johannesburg.
- Schonwetter, T and Armstrong, C 'Africa' in *Global information society watch 2009* (2009) Association for Progressive Communications (APC) and Humanist Institute for Cooperation with Developing Countries (Hivos), Johannesburg.

#### *ACA2K National Policy Dialogue Seminars*

- Nairobi, May 2009 (with Consumers International)
- Accra, June 2009
- Kampala, July 2009
- Maputo, August 2009
- Marrakech, October 2009
- Cape Town, Nov. 2009
- Johannesburg, Dec. 2009

#### *Public conference/seminar presentations*

- WIPO Africa meeting, Feb. 2009, Lilongwe
- African Parliamentarians meeting, March 2009, Kigali
- ACA2K-IQsensato Geneva Seminar, May 2009, Geneva
- Cape Town Book Fair, June 2009, Cape Town
- IFLA World Congress, Aug. 2009, Milan
- LIASA meeting, September 2009, Bloemfontein
- Internet Governance Forum (IGF), Nov. 2009 Sharm-el-Sheikh (with Consumers International)

#### *Workshop presentations*

- Consumers International African regional meeting, April 2009, Nairobi
- OSI-IQsensato A2K workshop, May 2009, Geneva
- IDRC internal 'brown bag' lunch presentation, May 2009, Ottawa
- IDRC Acacia Learning Forum, October 2009, Dakar
- WIPO impact assessment meeting, November 2009, Geneva

#### *Engagement with WIPO standing committees (with IQsensato)*

- WIPO CDIP meeting, April 2009, Geneva
- WIPO SCCR meeting, May 2009, Geneva
- WIPO CDIP meeting, Nov. 2009, Geneva

- WIPO SCCR meeting, Dec. 2009, Geneva

#### *Media coverage of ACA2K*

- ACA2K-IQsensato Geneva Seminar, 20 May 2009, held near WIPO Headquarters, timed to profile ACA2K in run-up to 25-29 May 2009 meeting of WIPO Standing Committee on Copyright and Related Rights (SCCR); covered by IP Watch online news service
- ACA2K Ghana National Policy Dialogue Seminar in Accra, 30 June 2009, covered by *Ghanaian Times* newspaper (on 2 July) and by Ghanaian radio outlets
- ACA2K Uganda National Policy Dialogue Seminar in Kampala, 9 July 2009, covered by *Uganda Observer* newspaper (on 2 August) and by Ugandan TV and radio outlets
- Online video interview with ACA2K South Africa's Pria Chetty, posted online 21 Oct 2009 by South Africa's Polity.org.za service, <http://www.polity.org.za/article/african-copyright-law-and-access-to-knowledge-2009-10-21>

#### *Monitoring*

- OM: refinement of OM monitoring tools at Cairo workshop -- revision of boundary partner maps, strategy maps, progress marker tables (at Cairo workshop and post-workshop), initial journaling via OM outcome monitoring journals
- OM Consultant monitoring meetings with Research Manager, Lead Researcher, Mozambique team leader, Senegal team leader and South Africa team member, Oct.-Nov. 2009
- OM Consultant monitoring teleconferences with members of ACA2K Egypt, Senegal, Kenya and Uganda teams

### **2010**

#### *Website*

- completion of French sections
- promotion of The African Commons Project (TACP) online petition on the South African Copyright Act, May 2010

#### *ACA2K National Policy Dialogue Seminars*

- Cairo, March 2010
- Dakar, March 2010

#### *Public presentations*

- Kenya Copyright Board Stakeholders Workshop, Nairobi, January 2010
- South African National Council for the Blind workshop on a copyright treaty for the visually-impaired (TVI), May 2010, Pretoria

#### *ACA2K scholarly publication (ACA2K book)*

- Armstrong, C, De Beer, J, Kawooya, D, Prabhala, A and Schonwetter, T (eds) *Access to knowledge in Africa: the role copyright* (2010) UCT Press, Cape Town, in association with the IDRC, Shuttleworth Foundation and the LINK Centre, Graduate School of Public and Development Management (P&DM), University of the Witwatersrand.

#### *Launching of ACA2K book*

- Cape Town International Book Fair, July 2010 (with UCT Press, IDRC, Shuttleworth Foundation, Wits LINK Centre)
- postal/courier distribution of 1000 copies, August-September 2010
- WIPO headquarters, Geneva, November 2010 (with IQsensato)
- Kampala, November 2010 (with the National Book Trust of Uganda (NABOTU))
- Maputo, December 2010 (with Mozambique Minister of Culture)

#### *Dissemination of ACA2K reports*

- WIPO uploads ACA2K Mozambique report to Wipolex section of WIPO website, <http://www.wipo.int/wipolex/en/profile.jsp?code=MZ>

#### *Media coverage of ACA2K*



- ACA2K Senegal National Policy Dialogue Seminar in Dakar, 26 March 2010, covered by Agence de Presse Sénégalaise (APS), Midipress Senegal, SudOnline.Sn and by the RDV private TV channel
- CNBC Africa TV interview with ACA2K South Africa's Tobias Schonwetter, 9 April 2010, to mark anniversary of 1710 Statute of Anne, the world's first copyright act; Schonwetter made strong mention of ACA2K in the interview; CNBC Africa is viewed around Africa on the Multichoice Africa DStv satellite pay-TV platform

#### *Monitoring*

- Final ACA2K Outcome Mapping (OM) project monitoring report (internal) by ACA2K OM Consultant Chris Morris

### **2011**

#### *Strategy*

- revision of ACA2K Strategy for Influence and Change (January 2011)

#### *Public presentation*

- World Social Forum Dakar, 8 February 2011

#### *Promotion of ACA2K book at WIPO*

- Kawooya, D 'Access to knowledge in Africa: the role of copyright' (2011) in *WIPO Magazine*, February 2011, World Intellectual Property Organisation, Geneva, [http://www.wipo.int/export/sites/www/wipo\\_magazine/en/pdf/2011/wipo\\_pub\\_121\\_2011\\_01.pdf](http://www.wipo.int/export/sites/www/wipo_magazine/en/pdf/2011/wipo_pub_121_2011_01.pdf)

#### *Partnership*

- ACA2K South Africa team partnership with The African Commons Project (TACP) for dissemination pilot project, using ACA2K South Africa research findings and recommendations to engage with South African educators and librarians, agreed February 2011

#### *South Africa dissemination pilot by TACP*

- TACP/ACA2K workshop with South African educators and librarians, and development of an online 'Simple Language' guide to copyright, April to September 2011

### **4.4 Lessons Learned from Implementation of Project Activities**

One activity that generated several key project implementation learnings was the successful ACA2K partnership with IQsensato in Geneva. It was learned that:

- there is no substitute, when interacting with formal policymaking spaces, for working through a trusted, on-the-ground intermediary, in this case the IQsensato consultancy;
- the idea for the linkage with IQsensato, and formalisation of the linkage, were made possible by networking, and good relationships, among the ACA2K Principal Investigators, the project Advisors, the IDRC Senior Programme Officer and IQsensato;
- it was important for project management to be flexible and agree to take steps to facilitate the partnership with IQsensato once it had been recommended by the Principal Investigators, Advisors and the IDRC Senior Programme Officer, in spite of the fact that the partnership had not been explicitly included in the initial project implementation plan;
- it was necessary for the project to have a significant travel budget for sending ACA2K researchers to Geneva to engage, via IQsensato's official WIPO 'Observer' status, with WIPO CDIP and WIPO SCCR; and
- it was important for ACA2K to generate the three WIPO Briefing Papers in 2009 that ACA2K representatives and IQsensato were able to distribute at CDIP and SCCR meetings.

As shall be seen later in this report, ACA2K's interactions with WIPO processes and the official WIPO community, as facilitated by IQsensato (and outlined in Section 4.3 above,) allowed ACA2K to generate what appeared to be meaningful outcomes in relation to the project's dissemination and policy engagement objectives.

The financial costs of sending ACA2K team members to Geneva on four separate occasions in 2009 were extensive, but it was ultimately money well spent. The overall learning is that it is important for African-based research projects to have the ambition, professionalism, and financial means, necessary to interact with key decision-making fora outside the continent.

## 5. Project Outputs

### 5.1 Research Outputs <sup>8</sup>

#### 5.1.1 Doctrinal Research Findings

Legal analysis in the eight study countries attempted to understand the nature and scope of copyright protection for learning materials, and the extent to which policymakers in the study countries are cognisant of access-enabling flexibilities, and have acted upon them. In this context, colonial influences on national law – and copyright law in particular – can be very significant when examining the scope and nature of copyright protection as well as the use of access-enabling flexibilities. A distinction is generally drawn between the common law tradition and the civil law system. The former generally reflects a utilitarian view of copyright, while the latter is generally rooted in authors' natural rights. ACA2K study countries reflect both systems, sometimes combined.

Historical and contemporary international dimensions of copyright protection are also of great importance. International copyright treaties and agreements contain, on the one hand, binding minimum standards for copyright protection in member states. On the other, they leave significant leeway to national lawmakers to implement those minimum standards.

The most important multilateral copyright treaties and agreements are the Berne Convention for the Protection of Literary and Artistic Works of 1886 (Berne Convention) administered by the World Intellectual Property Organisation (WIPO), and the World Trade Organisation's (WTO's) Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs Agreement) of 1994. Today, most countries, including all ACA2K study countries, are members of the WTO. They must, therefore, adhere to the TRIPs Agreement. Among other things, TRIPs incorporates important aspects of the Berne Convention (with the notable exception of Article 6*bis* regarding moral rights) and as a result, members of the WTO have to abide by these elements of the Berne Convention even if they are not party to the Berne Convention itself. Other international treaties and agreements that need to be considered include the WIPO Copyright Treaty (WCT) and WIPO Performances and Phonograms Treaty (WPPT) of 1996, which are together commonly referred to as the 'WIPO Internet Treaties.' In addition, national intellectual property regimes may be affected by regional economic/legal agreements and by bilateral or regional free trade agreements (FTAs).

Research confirmed that all eight countries studied afford copyright protection that complies with, and in many cases exceeds, the standards reflected in the relevant international treaties and agreements, including the Berne Convention and TRIPs. This is in spite of the fact that three of the study countries,

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<sup>8</sup> This account, in Section 5.1 of this report, of the ACA2K research findings across the eight study countries, was previously published, in nearly identical form, in Chapter 10 of Armstrong, C, De Beer, J, Kawooya, D, Prabhala, A and Schonwetter, T (eds) *Access to knowledge in Africa: the role copyright* (2010) UCT Press, Cape Town, in association with IDRC, Shuttleworth Foundation and Wits University LINK Centre. Available at <http://www.aca2k.org/research.html> [Accessed 30 September 2011]; and in Armstrong, C, De Beer, J, Kawooya, D, Prabhala, A and Schonwetter, T *ACA2K comparative review of research findings: copyright and access to knowledge in eight African countries* (2010) ACA2K project, IDRC, Shuttleworth Foundation and Wits University LINK Centre. Available (in English, French and Portuguese) at <http://www.aca2k.org/research.html> [Accessed 30 September 2011].



Mozambique, Senegal and Uganda, are least developed countries (LDCs) which have longer grace periods to comply with, let alone exceed, TRIPs obligations.

#### **5.1.1.1 Copyright Scope**

One example of national copyright protection exceeding international requirements in study countries is in relation to the scope of moral rights protection. Though the Berne Convention establishes some standards in this regard, TRIPs does not require countries to protect moral rights. Yet, even study countries that are not bound by the Berne Convention, such as Uganda and Mozambique, do protect moral rights of attribution (the right to claim authorship) and integrity (protection against unauthorised modification), and in Egypt moral rights also concern disclosure (the right to decide if and when to publish the work). Copyright protection for authors in these African countries, therefore, appears to exceed that required by the relevant international instruments and that given in some other countries, notably the United States. It seems evident, therefore, that such strong protection cannot merely be an attempt to fulfill international obligations. There are almost certainly local and/or African regional forces that have led to overly protective legal frameworks in some of the ACA2K study countries, often reflecting the fluid environments in which copyright in Africa is legislated and implemented.

Strong protection for authors' moral rights in Africa can help to alter the power imbalance that sometimes exists between creators and intermediaries, such as publishers, that often acquire ownership of authors' (economic) copyrights. This is especially true where moral rights cannot be waived or assigned. At the same time, however, this protection must be weighed against the possibility that an additional layer of rights might add to the list of impediments facing prospective users of protected materials, especially if – as is often the case with moral rights – such rights are granted in perpetuity. For instance, the right of attribution is unlikely to have any negative effects on the learning horizon. The right of integrity, however, while seemingly in the interests of the author, if inopportunistically applied without safeguards, could stifle criticism, review and parody, thus restricting the circulation of knowledge around the work. Similarly, the right of disclosure, without safeguards, could potentially lead to unreasonable and arbitrary exclusions of consumers and users from a particular work. Fortunately, few if any users of learning materials disrespect authors' moral rights of integrity and attribution, which are consistent with standard scholarly norms around, for example, plagiarism. Not surprisingly, therefore, flexibilities in some study countries that permit the use of protected materials in educational contexts often require proper citation or attribution as a precondition for immunity from liability.

Another finding in relation to the scope of copyright protection is that the copyright laws of most of the eight study countries contain express provisions for the protection of traditional knowledge, cultural expressions and folklore. South Africa, like many countries outside of Africa, does not yet have provisions protecting traditional knowledge, though it soon may. In some of the study countries, such as Ghana and Morocco, there is perpetual copyright protection for traditional knowledge, and in several cases this strong protection was established through outside technical assistance promoting model laws. In theory, such protection can help to preserve traditional knowledge and prevent its misappropriation. The trade-off, however, is that even local access to this knowledge is legally constrained by strong protection, and opportunities for use of this knowledge in the country's own educational system are potentially stifled. This is the case in Ghana where ownership of folkloric resources is vested in the state and a 'folklore tax' is levied for certain uses when appropriated by locals and foreigners alike.

#### **5.1.1.2 Copyright Term**

International agreements set the standard duration of copyright protection for most literary and artistic works at 50 years from the author's death. After this term, works fall into the public domain. The shorter the term of protection, the sooner works become accessible as part of the public domain.

In four ACA2K study countries — Ghana, Morocco, Mozambique and Senegal — the copyright term for literary and artistic works has been extended to 70 years after the death of the author, a term 20 years longer than the international standard. In Morocco, there was a legal obligation, via its free trade agreement (FTA) with the United States, to legislate such an extended term of protection.<sup>9</sup> In Senegal, the move to a 70-year term was linked to the 'TRIPs-plus' orientation of the 1999 revised OAPI Bangui Agreement, which mandates a 70-year copyright term and was signed by Senegal and the other members of OAPI (Organisation africaine de la propriété intellectuelle), the Francophone African intellectual property organisation.<sup>10</sup> In Ghana and Mozambique, the origins of the move towards a longer term of protection are more difficult to detect.

#### **5.1.1.3 Copyright Limitations and Exceptions**

Statutory limitations and exceptions are among the most important tools for national lawmakers to achieve balanced copyright systems that suit the specific needs of their respective countries.

The relevant international copyright treaties and agreements such as the Berne Convention and TRIPs impose three requirements for national limitations and exceptions. According to 'the three-step test,' limitations and exceptions must be: 1) applicable only in certain special cases; 2) not in conflict with the normal exploitation of the work; and 3) not unreasonably prejudicial to the legitimate interests of the author/rights-holder.<sup>11</sup> In several study countries, some or all of these requirements are built directly into national law. Where that is the case, it is possible that legal jurisprudence interpreting the three-step test in the international context could be useful to make national laws based upon similar principles more predictable for stakeholders relying on national limitations and exceptions to enable access to learning materials.

The scope of a country's national copyright limitations and exceptions is influenced, among other things, by the philosophical justifications underlying the country's system of copyright protection.<sup>12</sup> Generally, limitations and exceptions in civil law systems tend to be narrower than those in common law systems. Against this background, it is convenient to distinguish three main approaches to copyright limitations and exceptions in national copyright laws:

- First, some countries, especially civil law countries, follow a detailed approach and incorporate rather long lists of narrowly phrased copyright limitations and exceptions into their copyright laws.
- Second, some countries – most notably the United States – have chosen to introduce into their copyright laws a broad and open-ended provision, the so-called 'fair use' provision, which encompasses a large variety of uses. Fair use provisions might also be accompanied by several more specific copyright limitations and exceptions.
- Third, there are countries, especially common law countries, which have systems somewhere between the first two just outlined. While their copyright laws contain specific copyright limitations and exceptions — such as for educational institutions, libraries and archives or quotations as examples — they also employ so-called 'fair dealing' provisions, which in broader terms allow the permission-free use of copyright-protected material for purposes of research, private/personal study, private/personal use, criticism and review, and news reporting.

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<sup>9</sup> Article 15.5(5) of the Morocco-United States Free Trade Agreement of 2004, which entered into force on 1 January 2006. Available at <http://www.ustr.gov/trade-agreements/free-trade-agreements/morocco-fta/final-text>

<sup>10</sup> See Carolyn Deere *The implementation game: the TRIPs Agreement and the global politics of intellectual property reform in developing countries* (2009) Oxford University Press, Oxford.

<sup>11</sup> Berne Convention Article 9(2); TRIPs Agreement Article 13.

<sup>12</sup> Sam Ricketson *Study on limitations and exceptions of copyright and related rights in the digital environment* (2003) WIPO, Geneva. Available at [http://www.wipo.int/meetings/en/doc\\_details.jsp?doc\\_id=16805](http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=16805) [Accessed 20 December 2009].

The technicalities of fair use and fair dealing should not be conflated, but the concepts are remarkably similar. Both reflect the same fundamental principle of permitting uses that are considered fair. Pragmatically, a fair use provision tends to be, in general, more flexible than fair dealing because it is not confined to specific purposes or to specific categories of protected works. But ultimately, whether fair use or fair dealing applies more broadly in practice depends mostly on judicial and stakeholder interpretations (or the lack thereof) in the relevant jurisdiction.

The different approaches followed by the ACA2K project's African study countries in relation to copyright limitations and exceptions complicate a comparison: while private use of copyright-protected material, for instance, may be allowed in one country by a specific private use limitation and exception, it may be covered by a somewhat more general but not completely open-ended fair dealing provision in another. In this context, a few general observations from ACA2K study countries are worth mentioning.

First, Kenya and South Africa both use the specific term 'fair dealing.'<sup>13</sup> While the precise scope of their fair dealing provisions varies slightly, they are both very similar and the result of inherited British colonial laws. Another commonality between the Kenyan and South African cases is that researchers in both countries worry that their countries' fair dealing provisions are potentially too vaguely crafted to be a reliable access mechanism, particularly because there are few or no domestic cases interpreting that aspect of the law.

Uganda, another former British colony, has a distinct approach. At first glance, Uganda's Copyright Act appears to include an American-style provision by adopting the term 'fair use.'<sup>14</sup> Closer analysis, however, reveals important distinctions. Uganda's fair use provision does not contain an open-ended, illustrative list of permissible uses, but instead lays out a list of a limited number of specific activities that might be permitted if considered fair in light of a number of listed considerations. The result is a hybrid approach, somewhere between fair use and fair dealing. Similarly, in Ghana, another former British colony, the statute uses the term 'permitted use' to describe what is essentially a standard fair dealing system, which remains from the country's British colonial history. The lesson is that the conventional labels of fair use and fair dealing do not capture the nuances of limitations and exceptions throughout Africa.

*The following sub-sections compare limitation and exception provisions in the study countries related to specific uses or specific categories of users.*

### **Students, Teachers and Educational Institutions**

In the ACA2K study countries, educational limitations and exceptions generally allow some use of copyright-protected materials in educational settings without licences or royalties.

In six ACA2K study countries, students and teachers could arguably use entire works for educational purposes, subject to varying notions of fairness, under certain conditions. In Kenya and Mozambique, however, the existing set of copyright exceptions and limitations does not allow entire copyrighted works to be used by students, teachers and educational institutions. This restriction in Kenya and Mozambique potentially blocks the educational use of certain types of works, such as photographs, for example.

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<sup>13</sup> Section 26(1)(a) of Kenya's Copyright Act of 2001; Section 12(1) South Africa's Copyright Act of 1978.

<sup>14</sup> Section 15 of Uganda's Copyright and Neighbouring Rights Act of 2006.

In South Africa, Kenya, Uganda and Ghana, general fair dealing/fair use provisions encompass use for both research and study purposes, though the amount of reproduction permitted for these purposes is bound by the notion of fairness.

Egyptian copyright law contains exemptions for education, such as the right to stage non-profit performances of entire works (a provision which extends even beyond the educational context) and the reproduction of short works or short extracts from works for use in teaching.<sup>15</sup> Egyptian law also permits compulsory licensing (that is, granting of a translation and/or publishing licence for a work to an entity other than the work's rights-holder) for the purposes of education.<sup>16</sup>

### ***Libraries and Archives***

Other than for preservation and replacement purposes, and with the exception of Egypt and Kenya, the copying of entire works by libraries and archives is not explicitly permitted in the study countries. Moreover, in all study countries, limitations and exceptions lack clarity regarding digitisation of library and archival collections. The public lending right (PLR) system that exists in some jurisdictions – which compensates rights-holders for the availability of their works in libraries, making it more expensive for libraries to operate – does not exist in any of the study countries.

The treatment of libraries and archives in the copyright laws of several study countries is worrying. Libraries and archives are among the most important institutions for enabling access to learning materials and creating a literate and well-educated population. They are often subject to severe resource shortages and other constraints, making it hard to fulfill their mandate. Though libraries and archives do not expect to be completely free from ordinary copyright rules, and in fact appreciate the need to protect authors and their publishers, some additional freedoms could be created without unduly impacting upon copyright-owners' legitimate interests.

### ***Private or Personal Use***

Ghana, Egypt, Mozambique, Morocco and Senegal all have copyright limitations and exceptions that are specifically phrased to cater for private or personal use of copyright-protected materials without permission of the rights-holder or payment of a royalty. In South Africa, Kenya and Uganda, private or personal uses fall under fair dealing/use provisions, making the acceptable amount of private or personal use subject to the notion of 'fairness.' In Morocco, private use is liberally defined: Moroccan law expressly exempts some activities from the scope of the private use exception and limitation, and thus, implicitly, other non-specified private uses may be permitted.<sup>17</sup>

As part of these limitations and exceptions for private or personal use, all study countries permit some degree of private copying of non-digital works. But the extent of personal or private copying allowed in the digital realm is not explicitly covered in the study countries, thus leaving it uncertain as to whether the rules laid out for non-digital works should also apply to digital ones. (This ambiguity in the digital realm affects other exceptions and limitations too.)

### ***Quotations***

Quoting, without rights-holder authorisation, from copyright-protected works is permitted in all eight study countries. Kenya and Mozambique appear to have the most far-reaching provisions for quotations among the study countries because there are no express, statutory restrictions. In Egypt,

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<sup>15</sup> Article 171 of the Egyptian Intellectual Property Rights Protection Act (EIPRPA) of 2002.

<sup>16</sup> Article 170 of Egypt's EIPRPA of 2002.

<sup>17</sup> Article 12 of Morocco's Copyright Law of 2000 as amended in 2006: dahir n° 1-00-20 du 15 février 2000 portant promulgation de la loi n° 2-00 relatif aux droits d'auteur et droits voisins ; and dahir n° 1-05-192 du 14 février 2006 portant promulgation de la loi n° 34-05 modifiant et complétant la loi n° 2-00 relative aux droits d'auteur et droits voisins.

for instance, quotations are only permitted for the purposes of criticism, discussion or information. Ghana and South Africa also impose restrictions on the types of works that can be quoted. In South Africa, the quotation exception does not apply to, among other things, 'published editions.' Both the Ghanaian and the South African statutes expressly require that the quoted work must have been made public before being quoted. Additionally, the Ghanaian, South African, Ugandan and Moroccan statutes restrict the length of quotations to what is fair and justified by the purpose.<sup>18</sup> Quotations may also require acknowledgment of the source.

### ***Disabled Persons***

Only one out of the eight study countries, Uganda, makes specific mention in its copyright law of the needs of the disabled. Ugandan copyright law stipulates that it is not an infringement of copyright when a copyright-protected work is adapted into Braille or sign language for print-disabled people for 'educational purpose,'<sup>19</sup> subject to the test of fairness implied by the country's fair use clause. No other study country seems to consider that disabled persons require specific enabling copyright provisions to meet their distinct educational needs. Even Uganda's provision, which subjects permission-free development of adapted resources for disabled persons to a fairness test, is restrictive. The lack of accommodation for persons with perceptual or other disabilities is troubling from a development perspective. The legal reality in almost all ACA2K countries is feeding the growing international attention to the needs of this segment of the population. Some form of international harmonising instrument or declaration is not out of the realm of possibilities, but whether and how that would have a concrete impact on national laws in the study countries remains to be seen.

### ***Media***

The copyright laws in all the study countries contain specific provisions in support of media usage of copyrighted material. The review of copyright-protected works by the media is freely permitted in all eight study countries, and so is the use of excerpts of such works in news reporting. The reproduction by the media of entire political speeches and public lectures/speeches is allowed in all the study countries.

### ***Government Works and Legal Proceedings***

Morocco, Mozambique, Egypt, Senegal and South Africa place official texts of a legislative, administrative or judicial nature in the public domain. And all of those study countries, except Egypt, place official translations of such texts in the public domain. Ghana, South Africa and Mozambique ACA2K researchers reported that legal proceedings, which may or may not fall within the interpretation of what constitutes an official text of a judicial nature, are also in the public domain.

In South Africa and Mozambique, government and government-funded works are not automatically available in the public domain. Kenya's copyright law puts government works into the public domain but not government-funded works created by non-government people or entities.

Many of the study countries' laws are seemingly contradictory on the matter of government works and the public domain. The public domain in some study countries is not open to free and unfettered use by everyone, as it is normally understood in countries outside of Africa. Uganda's law, for example, on the one hand excludes 'public benefit works' from eligibility for copyright protection while on the other hand assigns trusteeship of such works with the government in a manner that connotes ownership. Similarly, in Senegal and Egypt, permissions and royalties are required from anyone generating profit

<sup>18</sup> Section 19 of the Ghana's Copyright Act, 2005; Section 12(3) of South Africa's Copyright Act of 1978; Article 15(1)(b) of Uganda's Copyright and Neighbouring Rights Act of 2006; Article 14 of Morocco's Copyright Law of 2000 as amended in 2006..

<sup>19</sup> Section 15(1)(k) of Uganda's Copyright and Neighbouring Rights Act of 2006.



from public domain works, which could potentially include tuition-charging educational institutions. In Egypt, permission and royalties are even required for ‘professional’ use of public domain work, which is difficult to interpret. In Senegal, the net is seemingly cast even wider, with any ‘exploitation’ of a public domain work potentially requiring permission and payment of royalties.<sup>20</sup>

Because Senegalese and Egyptian copyright laws require permissions and royalties for uses of the public domain, access to and innovation based upon the public domain materials in these two countries is potentially stifled. Moreover, most of the study countries give the state control over folkloric works that should otherwise be in the public domain, and in some cases impose fees for exploitation of folklore. Such control over use of what should be public domain folkloric resources has been deemed necessary in order to control exploitation of national cultural resources. In fact, Senegal’s system of fee payment to the state for potentially any ‘exploitation’ of any public domain work (folklore or otherwise), as introduced in its new 2008 Law, evolved out of a narrower provision in the previous 1973 Law, which had required permission and payment only for profit-making uses, and only for uses of folklore.<sup>21</sup>

#### **5.1.1.4 Compulsory Licensing**

There are other provisions in national copyright laws which are not usually classified as ‘limitations and exceptions’ but rather, could be termed as ‘flexibilities.’ Like limitations and exceptions, these flexibilities aim to encourage beneficial access to, and uses of, works as long as such access and uses do not unfairly undermine the legitimate interests of rights-holders.

One such flexibility is compulsory licensing. Compulsory licensing can be used to correct market failures or anomalies. When a copyright-protected work is not being made available in a country – or it is available but not at an affordable price or in an accessible language – a compulsory licence, typically issued by the state, permits an entity other than the rights-holder to exploit certain rights in that country.

In the copyright laws of Ghana, Kenya, Mozambique, Morocco and Senegal, there are no provisions for compulsory licensing. In South Africa, the Copyright Tribunal is permitted to issue compulsory licences in instances where a rights-holder’s refusal to license a copyrighted work to another party is unreasonable.<sup>22</sup> Egypt’s law expressly allows for compulsory licensing a) for the purposes of education in all forms and at all levels; b) against payment of fair compensation to the author or his successors; and c) subject to the licence passing the Berne three-step test.

Countries interested in facilitating translations of copyright-protected works into local languages other than English, French or Spanish can use the Appendix to the Berne Convention for compulsory licensing. But to do so, they must formally notify WIPO of their intention to avail themselves of the Appendix, and must comply with numerous procedural requirements. Of the study countries, only Egypt has provided such notice, though its notification has since expired. Egypt then incorporated into domestic law provisions enabling issuance of a compulsory licence for translation of a work into Arabic, after three years from the date of first publication, if the rights-holder has not already made such a translation within those three years.<sup>23</sup>

Uganda has not formally availed itself of the Berne Appendix, but has nevertheless incorporated compulsory licensing provisions into its national law for translations and reproductions.<sup>24</sup> Subject to

<sup>20</sup> Article 157 of Senegal’s Copyright Law of 2008; Article 183 of Egypt’s EIPRPA of 2002.

<sup>21</sup> Article 9 of Senegal’s Copyright Law of 1973: loi n° 73-52 du 04 décembre 1973 relative au droit d’auteur.

<sup>22</sup> Section 33 of South Africa’s Copyright Act of 1978.

<sup>23</sup> Article 148 of Egypt’s EIPRPA of 2002.

<sup>24</sup> Sections 17 and 18 of Uganda’s Copyright and Neighbouring Rights Act of 2006.

several conditions, one can apply to the state for a non-exclusive licence for translation of a work into English, Swahili or a vernacular Ugandan language – for teaching, scholarship or research purposes – after one year has passed since the publication of the work.

#### **5.1.1.5 Parallel Importation**

Parallel importation is another copyright flexibility involving the practice of legitimately importing, usually at a lower price, copyright-protected works from one country into another without permission from the copyright-holder in the country of import. The practice has significant potential to reduce prices for and increase access to learning materials, such as textbooks. Nevertheless, Egypt is the only study country that expressly permits parallel importation of copyright-protected works from any other country.<sup>25</sup> Senegal permits parallel importation only regionally, within the West African Economic and Monetary Union (Union économique et monétaire ouest africaine, UEMOA).<sup>26</sup> South Africa specifically allows the rights-holder to prohibit parallel importation of copyright materials.<sup>27</sup>

#### **5.1.1.6 Digital Rights Management (DRM), including TPMs and RMI**

Digital rights management (DRM) systems are, as the name suggests, systems for managing intellectual property rights in a digital environment. DRM systems can include one or more of the following: technological protection measures (TPMs), rights management information (RMI) or end user licensing agreements (EULAs). Provisions related to TPMs and RMI are typically introduced into a national copyright law after a country has signed the WIPO Internet Treaties, which require signatories to, among other things, prohibit circumventing of TPMs and/or tampering with RMI.

National laws prohibiting circumvention of TPMs are controversial because they may jeopardise the existing copyright balance safeguarded by copyright exceptions and limitations. TPMs allow for the lock-up of copyright-protected materials, regardless of established copyright balancing tools that strive to reconcile right-holders interests and public interests. This is because TPMs are unable to distinguish between infringing and non-infringing access to, and uses of, a copyright protected work. As a result, exceptions and limitations in the law (such as fair dealing exceptions or exceptions for personal, educational or library/archive use, or access to public domain works) can be undermined by technology used to lock down learning materials. TPMs are then further reinforced by anti-circumvention provisions. Why does this matter so much? As has been widely noted, the Internet, combined with digital technologies in general, and other ICTs in particular, offers boundless learning opportunities that were hitherto impossible in a print culture. This vast – and new – horizon of educational potential could be unrealisable if technology considerations are integrated into copyright law in a hasty and narrow manner.

All study countries except Mozambique and Uganda have enacted TPM anti-circumvention provisions. This is not surprising in Ghana and Senegal, both of which have signed and ratified the WIPO Internet Treaties and are, therefore, obliged by international law to have such provisions.<sup>28</sup> It is regrettable, however, that Ghana and Senegal did not make use of flexibilities within the Internet Treaties to include reasonable exceptions to the circumvention prohibitions.

South Africa has signed the WIPO Internet Treaties but not yet officially ratified or implemented them. Nevertheless, South Africa has enacted TPM anti-circumvention provisions, not in its copyright law but in its Electronic Communications and Transactions (ECT) Act 25 of 2002.<sup>29</sup>

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<sup>25</sup> Article 147 of Egypt's EIPRPA of 2002.

<sup>26</sup> Article 36(2) of Senegal's Copyright Law of 2008.

<sup>27</sup> Section 28 of South Africa's Copyright Act of 1978.

<sup>28</sup> Section 42 of Ghana's Copyright Act of 2005; Article 125 of Senegal's Copyright Law of 2008.

<sup>29</sup> Section 86 of South Africa's Electronic Communications and Transactions Act of 2002.

Morocco is in the process of ratifying the WIPO Internet Treaties, as required pursuant to its free trade agreement (FTA) with the United States. Also pursuant to that agreement, Morocco implemented anti-circumvention provisions in a considerably more precise manner than contemplated by the Treaties.<sup>30</sup> Moroccan law exempts certain non-profit entities (non-profit libraries, archives, educational institutions and public broadcasters) from the prohibitions on circumvention,<sup>31</sup> utilising the small amount of flexibility left open in the Morocco-US FTA.

In Kenya and Egypt, though neither country has ratified the WIPO Internet Treaties, strict anti-circumvention provisions, without exceptions and limitations, have been enacted.<sup>32</sup> Neither country was legally compelled to introduce these access-inhibiting provisions, but they did so anyway. This demonstrates the significant influence that technical assistance and implicit or explicit pressure from outside forces can have on copyright laws in Africa.

#### **5.1.1.7 Judicial Decisions**

In most study countries, case law with respect to copyright in general, and access to learning materials in particular, is sparse. Copyright litigation is uncommon. In Mozambique and Egypt, for example, there is reportedly little or no copyright case law related to learning materials. Meanwhile, research in Morocco, Ghana and Uganda suggests that alternative dispute resolution mechanisms, involving arbitration, negotiation and other out-of-court dealings, are sometimes used to settle copyright disputes. Kenya and South Africa, in contrast, have a relatively rich body of copyright-related case law. However, even in these countries, there is little case law specifically related to learning materials.

In all the study countries except South Africa, there are problems with the publishing and reporting of judicial decisions, making it difficult to draw firm conclusions about judicial interpretation of the law. The implication is that greater reliance has to be placed in these countries on statutory provisions in the abstract, without the aid of interpretative guidelines from courts.

The ACA2K Country Reports and Executive Policy Briefs highlighted legal ambiguities in a negative light, characterising ambiguities as imperilling access to learning materials. However, depending on the context, such constructive ambiguities in the legal framework, caused by a lack of judicial interpretation, could in some cases facilitate access to learning materials. Informal interpretation and application of the law by institutions such as libraries and enforcement agencies have enormous relevance for access to learning materials. Access-enabling interpretations of the law could be reasonable in the absence of precedents adopting the opposite position. But it is of course also true that, given the discourse dominating the copyright environment internationally and in many countries, an ambiguity in a country's national copyright legal framework could often lead to an informal interpretation that is access-restricting rather than access-enabling. Moreover, most public-interest institutions like libraries and universities generally stay clear of activities that might bring about litigation, hence their often narrow and strict interpretation of the law.

Another important issue related to the lack of judicial interpretation of access-related provisions in ACA2K country copyright laws is the issue of the aforementioned 'three-step test' contained in the Berne Convention, the TRIPs Agreement and other international instruments. If and when courts in ACA2K countries do start to interpret limitations, exceptions and flexibilities, they will probably consider this test. The three-step test could also be relevant to administrative interpretations of provisions in the law by, for instance, enforcement agencies, or by collective management

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<sup>30</sup> Article 65 of Morocco's Copyright Law of 2000 as amended in 2006.

<sup>31</sup> Article 65.1 of Morocco's Copyright Law of 2000 as amended in 2006.

<sup>32</sup> Section 35(3) of Kenya's Copyright Act of 2001; Article 181 of Egypt's EIPRPA of 2002.



organisations negotiating licensing arrangements with universities. Finally, and centrally for this research, the three-step test binds legislators considering the kinds of access-enabling amendments to national laws that are recommended in the ACA2K Executive Policy Briefs. To summarise, a country's obligations pursuant to the Berne Convention and TRIPs Agreement apply not only to its statutory provisions but also to other 'measures' including, arguably, judicial and administrative interpretations and applications of the law.

The difficulty in speculating as to whether a particular provision (or interpretation or application of the provision) passes, or does not pass, the three-step test, arises from the fact that there is considerable disagreement, even among experts in the field, as to the nature and interpretation of the three-step test. There are divergent schools of thought on whether the three-step test is access-friendly or protection-friendly. Some might argue that the three-step test, in its vagueness, allows latitude for both access-enabling and protectionist interpretations. Others might argue that the three-step test is strongly biased towards rights-holders, and that no copyright limitation, exception or flexibility can survive a strict interpretation of the three-step test.

#### **5.1.1.8 Relevant Non-Copyright Laws and Policies**

There are laws and instruments other than copyright statutes and regulations that affect access to learning materials. The most important of these are constitutional protections for fundamental rights such as the right to education, information, freedom of expression/communication, and language rights. Such constitutional provisions could potentially be used to challenge elements of a country's copyright law that conflict with constitutionally-protected rights. For instance, in countries where property rights or intellectual property rights are not constitutionally entrenched, constitutional framing of education as a fundamental right could provide important interpretative guidance in determining the scope of copyright protection.

In some countries, there are non-copyright laws, regulations or policies that govern aspects of the intersection between copyright and knowledge. For instance, Uganda and South Africa have specific laws dealing with access to government-held information. South Africa also has legislation designed to encourage public institutions and universities to exploit intellectual property rights from publicly financed research.<sup>33</sup> Unfortunately, the focus of that legislation is on potential commercial gain rather than on access, and consequently, the legislation fails to safeguard the public domain. For instance, it does not mandate that the outputs of publicly financed research be accessible to the public. Similarly, the much-lauded Free and Open Source Software (FOSS) Policy adopted by the South African Government<sup>34</sup> promotes the use of FOSS in government information technology systems, but fails to set out ways to build public access to the actual content residing on such systems.

#### **5.1.1.9 Conclusions from the Doctrinal Research**

The doctrinal studies in the eight ACA2K countries have found that national laws in all the countries provide strong copyright protection, and in several cases the protection exceeds international legal standards and requirements as well as levels of protection offered in many countries outside Africa.

It was found that all of the study countries with the exception of South Africa have made substantial changes to their copyright laws within the past 10 years, and in all cases the overwhelming emphasis of the changes has been on rights-holder protection rather than on user access. The starkest example of the emphasis on rights-holder protection is the extension of the standard term of protection from 50 years to 70 years in four of the countries: Ghana, Morocco, Mozambique and Senegal.

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<sup>33</sup> South Africa's Intellectual Property Rights from Publicly Financed Research and Development Act 51 of 2008.

<sup>34</sup> Policy on Free and Open Source Software Use for South African Government, 2006. Department of Public Service and Administration. Available at: <http://www.info.gov.za/view/DownloadFileAction?id=94490>

And the copyright limitations and exceptions related to learning materials in the study countries are, in various ways, problematic. No study country takes advantage of all, or even most, of the flexibilities that exist in (and outside of) relevant international agreements such as TRIPs. Provisions to enable access in the digital environment are mostly absent from the laws of the study countries. Limitations and exceptions for students and teachers, educational institutions, and libraries and archives fail to adequately address the needs of disabled persons – with the exception of the provision in the Ugandan law for adaptation into Braille or sign language for educational purposes, a provision which is itself subjected to the fairness test. Distance learning and e-learning are not specifically catered for in any of the countries' copyright laws. To the extent that copyright laws in ACA2K study countries address the Internet and other ICTs, they do so primarily to restrict access to learning materials by encouraging the use of TPMs and prohibiting TPM circumvention, even for non-infringing purposes. In the case of technology use in education, such needless restrictions have potentially severe effects, as they have the potential to deny many of the enormous opportunities for affordable and even free learning offered by the Internet, digital technologies in general and ICTs in particular.

Meanwhile, because there is little or no case law interpreting copyright legislation in respect of learning materials in the study countries, there is considerable ambiguity in most countries' laws. This ambiguity could hinder or facilitate access to learning materials, depending on the context.

### **5.1.2 Qualitative Research Findings**

#### **5.1.2.1 Scholarly and Other Literature**

An extensive literature review conducted throughout all the study countries demonstrates that there is a generally sparse (but growing) body of African scholarship addressing copyright issues. Several conclusions can be drawn from a synthesis and analysis of this literature.

Practising lawyers in the study countries are generally not active writers on copyright and/or education. Furthermore, the scholarship on copyright being produced by African scholars generally reflects African universities' primary orientation toward teaching as opposed to research. The small body of literature that does exist addresses copyright from various perspectives, including an access-oriented perspective. And more recently, there has been some significant research output generated by undergraduate and graduate students in law, information sciences, communications and other disciplines. This is an encouraging development.

There have been relatively few government-commissioned or government-authored reports on copyright and education in the study countries. One notable exception to this pattern is a 2004 study commissioned by the Ugandan Law Reform Commission (ULRC) to examine Uganda's 1964 legislation in light of changing technologies and their potential impacts.

In general, South Africa has more copyright scholarship, particularly in relation to access to knowledge, than any other study country. In part, this can be traced to civil society interest<sup>35</sup> and projects around access to learning materials.

A final observation concerning published resources on copyright and education (and copyright generally) in Africa is that there is a considerable amount of information available in the form of cursory media coverage, opinion commentaries and rights-holder publicity materials. ACA2K research suggests that such publications typically lack depth of analysis and present only a partial picture by

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<sup>35</sup> See, for instance, The African Commons Project (TACP), <http://www.africancommons.org/> [Accessed 20 May 2010].

focusing on copyright protections rather than access-oriented flexibilities in copyright law. There is a distinct need, therefore, for innovative, evidence-based public and scholarly discourse that presents balanced perspectives on copyright issues.

#### **5.1.2.2 Impact Assessment Interviews**

As seen in the preceding chapters, in each study country researchers engaged a variety of key actors and stakeholders, including representatives from policymaking, government and enforcement entities, tertiary educational communities, and copyright-holders. The interview process addressed several thematic areas and revealed the following insights into copyright and education.

##### ***Legitimacy of the Law***

Many, but not all, interviewees perceived copyright as one of several barriers to accessing learning materials. Most people who did not perceive copyright as a barrier to access were unfamiliar with the law, and when informed about applicable rules in their country, acknowledged that their modes of access are probably illegal in terms of copyright law. These interviews revealed that learning materials access is often achieved through behaviours adopted in spite of, or in ignorance of, the law. Infringing access to learning materials enabled primarily by lack of copyright enforcement may be a viable, albeit less than ideal, bandage for the access problems facing African tertiary education systems in the short-term. But when enforcement and copyright compliance inevitably increase in the future, this unfettered mode of access will cease to be available.

Infringement conducted in order to access learning materials was found to be rampant among users within the tertiary education communities from which interviewees were drawn. Government efforts in the study countries to enhance access to learning materials – by, for instance, commissioning materials or subsidising textbook purchases – are mainly directed at primary and secondary education sectors. Learning materials at the tertiary level are often sourced internationally and are rarely subsidised by governments. These tertiary-level materials are expensive, and the lack of affordability was cited across all study countries as the primary reason for large-scale (often illegal) photocopying by learners and the commercial photocopying operations serving them.

Such widespread infringing behaviour is problematic not only because it means present access channels are precarious. More broadly, the lack of compliance with the legal framework undermines the legitimacy of copyright principles, and even the rule of law. As long as copyright law is enforced only selectively or not at all, citizens receive mixed messages about the importance of respecting law and the principles it embodies. At the same time, however, strict compliance with copyright is infeasible. Copyright laws on the books in the study countries lack necessary flexibilities, and are so far from removed from the day-to-day realities facing education systems in these countries that enforcement is practically impossible if the existing moderate levels of learning materials access are to be preserved. The resulting illegitimacy is not in anyone's interests. It facilitates extremism, which undermines movement toward a balanced, legitimate national copyright system.

The impact assessment interviews also found that in some countries, the moves towards tighter copyright protection have been pushed by a combination of external pressure (from Northern governments and technical assistance programmes) and internal pressure. For instance, in both Senegal and Uganda, there has been strong lobbying by local cultural producers for increased copyright protection.

##### ***Administration and Enforcement***

In all study countries there are government agencies tasked with aspects of copyright administration or enforcement. These agencies' duties typically consist of some or all of the following: licensing collective societies; setting royalty tariff rates for particular activities; public engagement and raising

awareness of copyright issues; and operating enforcement programmes.

Across the spectrum of interviewees working for these administrative or enforcement agencies, or interviewees working in government departments responsible for the agencies, there was a wide variety of views about the relationship between copyright and learning materials. Some interviewees recognised a need for a balanced system to ensure access while at the same time protecting the interests of rights-holders. Others saw copyright chiefly in terms of enforced protection for rights-holders.

Based on data obtained through impact assessment interviews, the agencies can be classified according to their relative institutional strength.

Study countries with relatively less strong administrative institutions are Uganda, Senegal and Mozambique. These countries' administrative or enforcement agencies have only recently been established by statutes, or operate without sufficient financial, human and other resources, or are facing increased competition and possible irrelevance due to the creation of new entities. Countries such as Kenya, Ghana and Egypt have emerging institutions that are in the midst of building strength and capacity. Institutions that administer copyright in these countries have either existed for a considerable period of time or, if they are newly established, have strong leadership and substantial government support. In South Africa and Morocco, administrative institutions can be characterised as relatively strong; they are well-established, well-resourced and generally influential in the national or even international copyright environment.

Classifying a country's administrative institutions in this way is a useful frame for understanding the kinds of programmes operated, and the copyright perspectives promoted. Evidence suggests that the weaker the institutional framework, the more dependent the administrative agency is on external financial, technical and other kinds of support. This dependency renders weak institutions more susceptible to undue influence from particular constituencies of stakeholders. Because of information asymmetry and skewed economic incentives for participation, the supporting stakeholders have tended to represent large groups of industrial rights-holders, such as record companies or book publishers, rather than representatives of education sectors. For example, the push for greater protection and enforcement in Senegal and Uganda is led by musicians supported by the music industry. In Ghana and Mozambique, reprographic rights organisations (representing literary publishers) are especially influential.

The problem of rights-holder lobbying power is also evidenced in countries with emerging institutions, such as Egypt, and with strong institutional frameworks, such as Morocco and South Africa. However, with a strong institutional framework, it appears that processes tend to be more participatory, and programming more reflective of a diversity of interests impacted by copyright policy and practice. For instance, copyright administrators in South Africa have demonstrated greater willingness to engage concerns around access to knowledge than their counterparts in some other ACA2K study countries. Whether this will eventually yield dividends for the South African education system through better access to learning materials remains to be seen, however.

There is also some evidence to suggest that stronger institutions may correlate with (though not necessarily cause) increased awareness and enforcement of copyright. Throughout all the study countries, systemic copyright infringement is widespread. But infringement appears to be least rampant in the country with the strongest institutional framework, South Africa. In every other study country, there is evidence of complete ignorance of or disregard for copyright law, in the context of photocopying entire books, for example. The reasons for such infringements are complex, but essentially reflect people's determination to pursue the most cost-effective access channels available.

It can be argued that countries with stronger copyright institutional frameworks (not necessarily stronger copyright laws – an important distinction) may be better able to grapple with the daily realities facing their citizens, and to calibrate copyright laws, regulations, policies and practices accordingly.

### ***Educational Institutions/Libraries***

Photocopying of learning materials at and near tertiary educational institutions was found to be commonplace in most of the study countries. Some copying activities, such as selling photocopies of entire copyright-protected books that are still in print, are clearly illegal. Other activities, such as students or teachers copying parts of books, however, are less clearly an infringement of copyright, because in most of the study countries, what constitutes ‘fair’ copying is an open question due to vagueness in the law and an absence of interpretation mechanisms such as judicial decisions, regulations, government policies or licensing agreements between right-holders and collective management organisations.

It was found that the reliance on photocopying in tertiary-level education communities was a result not just of users’ inability to purchase high-cost materials, but also the poor state of resources in many university libraries. Educational institutions in Senegal (which is among the least economically developed of the study countries) face some of the most significant access challenges. For example, the law library at the Université de Cheikh Anta Diop (UCAD) in Dakar has book stacks full of photocopies rather than printed textbooks because students vandalise the originals through ‘page-tearing’ in order to secure access to portions of the books. Signs posted next to photocopiers at a UCAD library instruct students to photocopy rather than tear pages out of books, while at the same time informing students that photocopying could be an infringing activity. Libraries in most other study countries are somewhat better resourced, although Senegal’s university libraries are not alone in facing vandalism issues. Page-tearing from books and widespread, infringing photocopying by students or the copy shops they buy from are problems in all study countries.

Libraries in several of the study countries have taken some steps to develop institutional policies on copyright and/or access. Whether those policies are access-enabling is sometimes debatable. The libraries interviewed in Egypt, for instance, do not allow users to check any books out, meaning their entire collections are only for viewing on the library premises. The justification offered by the interviewees at these libraries was that such measures are required to prevent theft and vandalism.

Meanwhile, some well-resourced and well-intentioned institutions are not yet able to fully capitalise on access-enabling opportunities. The Bibliotheca Alexandrina (BA) in Egypt has acquired state-of-the-art technology to print books on demand, but Egyptian researchers found that the BA’s print-on-demand service was only being used in demonstrations for distinguished visitors. Apparently copyright negotiations with publishers were one of the factors delaying deployment of the service. And a quirk of the Egyptian copyright law which requires government permission and payment of a fee before copying a public domain work for professional or commercial use may complicate BA’s ability to print/distribute works for which copyright has expired. When it is able to fully capitalise on the potential of access-enabling technologies such as print-on-demand, the BA can become not only a continental but worldwide leader in this kind of materials delivery.

### ***Gender***

The ACA2K project sought to build network members’ awareness and capacity to investigate gender issues in their impact assessment interviews. Achieving full gender equity is a fundamental component of development, and is therefore a necessary part of any development-oriented research project. All members of the ACA2K research network attempted to engage gender issues, and there were also attempts by some project members to document the gender-related progress of the network, and of research subjects, through the project’s monitoring framework.



The ACA2K gender strategy for raising awareness among network members seems to have been largely successful. Almost all teams investigated gender as part of their research, and most reported on gender-related findings. At the project monitoring level (using the outcome mapping (OM) framework described in Chapter 1), positive behaviour changes, including growth in awareness among network members of the need to interrogate gender, were documented. However, the country teams, in monitoring the outcomes of their research and initial dissemination work, were mostly unable to document significant gender-related behaviour change among the stakeholders in their national copyright environments. The difficulty in raising awareness of the possible intersections among copyright, access to learning materials and gender *outside of* the research network demonstrates the need for further work in this area using innovative, purpose-specific methodologies.

Unfortunately, because of the lack of awareness of, or prioritisation of, gender issues among the stakeholders interviewed by the country teams, gathering qualitative research data for analysis, via the impact assessment interviews, was a substantial challenge. Very little gender-related data emerged from the interviews, and the data that did emerge were largely anecdotal findings. At the same time, however, the fact that very little data emerged despite substantial research efforts is in itself interesting. Researchers' inability to uncover significant data does not necessarily demonstrate that there are no linkages among copyright, access and gender. Instead, the lesson could be that there is a need for different, more appropriate research methods. Another possible lesson is that building issue awareness is a prerequisite to research investigating the underlying causes of the problem. The project's findings, however limited, do therefore provide insights into potentially valuable future directions in terms of research questions and methodologies.

The strongest gender-related research data came from Uganda, South Africa and Kenya, the latter of which benefited from additional resources and attention directed at follow-up research around this sub-issue. The research experiences in all three of these countries, and other countries to a lesser extent, provide valuable insights into the research problem, as well as lessons for the future.

In the Ugandan study, there were anecdotal findings suggesting that men are more likely to infringe copyright than women, and that plaintiffs in copyright court cases seem, anecdotally, more often to be women. As well, students interviewed at Kampala's Makerere University spoke of how library photocopy restrictions (aimed at copyright law compliance), when coupled with women's safety concerns at night, made learning materials access less reliable for female than for male students. It was said that female students do not typically stay at libraries at night, because of safety issues, and thus the copyright restrictions on photocopying have more impact on women than men.

The anecdotal finding that plaintiffs in Ugandan copyright cases are often women raises some possible questions for future research. And the observations at the Makerere library beg the question: if the Ugandan copyright law explicitly permitted more photocopying, or the university library policies enabled more lending, or education systems and copyright limitations were developed with more focus on enabling distance education and e-learning, could the seeming gender bias generated by seemingly differential access to library materials be ameliorated?

The South African research also uncovered some potentially meaningful findings. For instance, it was pointed out by an interviewee that most general publishing companies in South Africa are controlled by men, but women run some of the key educational publishers. This finding would seem to warrant further investigation. For instance, might female publishers, potentially more keenly aware than men of access difficulties faced disproportionately by women (particularly black women in the South African context), be more open than male publishers to non-traditional approaches to copyright licensing, such as Creative Commons licensing?

In Kenya, interviewees spoke of educational access biases favouring men over women, and pointed to the fact that the Kenyan Government, in its affirmative action policies, is clearly anxious to build gender equality in the country's education systems. Thus, the question arises: how does the copyright environment in Kenya interface with the recognised links between gender and educational access? For instance, many tertiary-level texts in Kenya are published by foreign firms, and there are no provisions in the Kenyan law for compulsory licensing of local editions or for parallel importing from other jurisdictions of foreign texts. If compulsory licensing or parallel importing were allowed, the result could be lower-priced books. And thus, future research could ask: to what extent does the (partially copyright-induced) absence of affordable texts impact female learners more than male learners, given that males tend to have better access to resources than females? And to what extent is the (partially copyright-induced) absence of affordable learning materials undermining the Kenyan Government's efforts to increase gender equality in education access?

In Mozambique, it was found that operators of the Eduardo Mondlane University (UEM) online distance education programme were to some degree uncertain as to the correct approaches to take regarding copyright in the materials being developed and used. It would thus seem that an investigation into the effect on UEM of the absence of distance learning and e-learning provisions in the Mozambican Copyright Law could yield useful findings. Also, if it were found via future research that females are more likely to benefit from distance education than men in Mozambique (it was said by the Mozambique researchers that women have a greater need to remain near their homes, often remote from tertiary educational institutions), then an intersection between copyright, access and gender might be demonstrated.

A key lesson learned from the Kenyan gender-focused follow-up research process concerns the importance of adopting flexible, participative qualitative interviewing methods for research of this nature. Interviewers, moreover, should be specifically trained and experienced using the chosen methodologies. Asking interviewees to reflect on a possible intersection between copyright, learning materials access and gender is asking people to talk about something they may never have talked about before, and thus an element of back-and-forth between interviewer and interviewee – a kind of participatory, action research – is required, with the interviewer drawing the interviewee out and helping the interviewee to try to identify subtle, perhaps hidden (even from the interviewee) perceptions, experiences and understandings. This kind of research work requires many particular, specialised skills on the part of the interviewer.

Other gender-related methodological insights from the project, gleaned with the assistance of an expert consultant, include:

- gender issues could be addressed separately, segregated methodologically (but not conceptually) from the other aspects of the research, while at the same time not putting the issue in a 'gender ghetto' within the broader research project;
- focus groups could be included within the range of participative interview methodologies employed;
- the interviewing process could be made continuous and not a one-time event, with a relationship built between interviewer and interviewee; and
- future research could be more specific, focused and clear about the gender research question being asked.

### ***Information and Communication Technologies (ICTs)***

All the study countries except South Africa reported that ICT infrastructure remains weak in the tertiary education sector. In South Africa ICT infrastructure is relatively strong at some universities, but at the same time there are many historically disadvantaged tertiary institutions with severe resource

constraints of all kinds, including limited ICT capacity. At the University of Cape Town (UCT), which was investigated by the ACA2K South African research team, it was found that there was robust ICT infrastructure, combined with digital resources that fully support the research needs of the academic community.

Senegal's Université de Cheikh Anta Diop was found to have a very small number of computers from which to access an intranet (not the Internet or World Wide Web), and was still relying primarily on card catalogues. Institutions such as Makerere University in Uganda, the Eduardo Mondlane University (UEM) in Mozambique, and the University of Ghana Legon, have reasonable ICT infrastructure and are technologically (though perhaps not legally) able to provide their communities with access to a wide range of electronic resources.

In Ghana, sharing of electronic resources among public universities is occurring through the Consortium of Academic and Research Libraries (CARLIGH). In Mozambique, UEM's new online distance learning programme is an ambitious and fairly well-resourced ICT-based access programme, illustrating that innovative institutional use of new media is entirely possible even within a least developed country. It was found, however, that there are still uncertainties at UEM about the copyright rules and practices that apply to such distance education initiatives.

### **5.1.2.3 Conclusions from the Qualitative Research**

Qualitative impact assessment interviews confirmed that an enormous gap exists in the study countries between copyright law and practices pertaining to access to learning materials. In the typical situation, tertiary users, who may or may not be aware of copyright law, rely heavily on illegal photocopying to access books or other learning materials. In everyday practice, with respect to learning materials, vast numbers of people act outside of legal copyright structures altogether. Among all of the countries and institutions studied, only in South Africa, and even there only at advantaged institutions such as UCT, can it be said from the research that tertiary students have the practical opportunity to legally obtain sufficient access to learning materials. Such findings suggest that copyright laws, regulations, policies and practices in the study countries are problematic, and should be reformed.

## **5.2 Recommendation Outputs (Drawn from the Research)** <sup>36</sup>

Empirical evidence gathered during almost three years of work by more than 30 researchers investigating copyright laws, policies and practices in eight African countries has provided a valuable opportunity to assess how copyright environments really impact access to learning materials on the continent.

Perhaps the most important revelation from this research is that copyright laws in all study countries comply with international copyright standards. In many cases, the African countries studied provide

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<sup>36</sup> This account, in Section 5.2 of this report, of the ACA2K recommendations as drawn from the research findings across the eight study countries, was previously published in Chapter 10 of Armstrong, C, De Beer, J, Kawooya, D, Prabhala, A and Schonwetter, T (eds) *Access to knowledge in Africa: the role copyright* (2010) UCT Press, Cape Town, in association with IDRC, Shuttleworth Foundation and Wits University LINK Centre. Available at <http://www.aca2k.org/research.html> [Accessed 30 September 2011]; and in Armstrong, C, De Beer, J, Kawooya, D, Prabhala, A and Schonwetter, T *ACA2K comparative review of research findings: copyright and access to knowledge in eight African countries* (2010) ACA2K project, IDRC, Shuttleworth Foundation and Wits University LINK Centre. Available (in English, French and Portuguese) at <http://www.aca2k.org/research.html> [Accessed 30 September 2011].



even greater protection than international laws require. Thus, the countries studied do not need advice or assistance in drafting legislation to bring levels of legal protection up to par. Simply put, Africa does not need stronger copyright laws. This in itself is a very important finding, which urgently needs to inform African national copyright policymaking at a time when many countries — including the ACA2K study countries Kenya, Ghana and South Africa — are in the midst of revising, or planning revisions to, their copyright laws.

Throughout the continent, however, there is a lack of awareness, enforcement and exploitation of copyright. A gap exists, to varying degrees, between copyright law and on-the-ground practices in all countries studied. Empirical evidence has confirmed the intuition and impression that copyright law in Africa is widely ignored, if even known about. And many of those who are aware of the concept of copyright are apparently unable to comply with it because of their socioeconomic circumstances.

Access to learning materials in the study countries is obtained mainly through copyright infringement. When copyright enforcement begins in earnest (as research indicates it will), then, without mechanisms in place to secure non-infringing channels of access to knowledge, many learners, particularly at the tertiary level, will be in a precarious position. Entire systems of education will be vulnerable. Thus, maintaining the status quo is not a sustainable policy option. Also, representing an unreliable and unsustainable access mechanism, learners' systemic infringement of copyright in order to obtain necessary access to educational materials has a detrimental effect on the integrity of the entire copyright system. Copyright laws that cannot be followed by the vast majority of society serve only to generate resentment of their underlying principles and ultimately undermine respect for copyright and the rule of law generally.

The consequences of maintaining unrealistic copyright systems are serious. Though the ACA2K research acknowledges that there are many other barriers to access to learning materials — such as the high prices of books and student poverty — the ACA2K project has revealed that copyright is an important and under-researched barrier. The research suggests that an appropriate and sustainable copyright environment, combined with other measures to make access to materials more affordable, could be one of the key components of a holistically well-functioning tertiary education system. Though all the countries studied have other urgent public policy matters to address, from health crises to security and political or economic stability concerns, the importance of education in addressing these and related development challenges should not be understated.

For these reasons, the overarching recommendation that emerges is that all stakeholders throughout and beyond Africa should work towards solutions that can help to bridge the gulf in the continent between national copyright laws and the prevailing practices used for accessing learning materials. There are essentially two ways to narrow this divide: modify behaviour and/or reform laws. Expanding copyright protection even further beyond international norms is almost certain to aggravate the existing compliance challenges. It is already impractical for most members of tertiary educational communities in the ACA2K study countries to adhere to existing legal requirements; compliance with even stronger laws is clearly unattainable. Evidence from the study countries strongly suggests that the copyright environment can be improved by legal reforms that make copyright more flexible and suitable to local realities. Paradoxically, less restrictive laws could provide more effective protection. Less restrictive laws would enable entire segments of the population currently operating outside of the copyright system altogether to comply with reasonably limited, realistic rules. This could, in turn, increase awareness of and respect for, the concept of copyright, compounding in the longer term to bolster the effectiveness of the system for all stakeholders.

Research results from the study countries contain several specific examples of best practices, as well as areas for improvement, for lawmakers, rights-holders and the tertiary education sector. Probably

the best place to start is with the supreme laws of the countries where access to learning materials is a concern — their constitutions. Constitutions in several of the study countries recognise a right to education, which arguably includes a right to adequate access to learning materials, as well as other important rights such as freedom of expression and freedom of access to information. The Mozambican Constitution even goes so far as to specifically mention copyright as having a role in cultural development — a provision which presumably should be interpreted as protecting both the rights of creators and the rights of users. African national copyright policymakers should be encouraged to make use of constitutional provisions as the foundations for user-friendly amendments to copyright laws. And in countries where property rights in general are constitutionally protected, care should be taken to remain aware of the crucial distinctions between physical and intellectual property.

Among the most important provisions related to access to learning materials are countries' limitations and exceptions. Uganda's provision for Braille and sign language adaptations for educational purposes is something other countries might wish to note. And Uganda's hybrid approach to development of its fairness clause is worthy of closer examination by African lawmakers. Ghana's statutory references to 'permitted use' (in some cases subject to the notion of 'fair practice') — which is applied to a broader set of uses than is the case in British-style fair dealing clauses — and the subsequent work that has been done by stakeholders in Ghana to develop interpretive practices, is a promising example of attempts by African copyright lawmakers and policymakers to be innovative and proactive.

Another area where African lawmakers could try to chart their own course is in provisions regarding TPMs. Countries that do not yet have TPM anti-circumvention provisions should resist pressure to enact protections for TPMs prematurely, when doing so may not be in the best interests of local stakeholders. And countries that do already have anti-circumvention provisions should consider whether flexibilities exist in their TPM provisions to ensure the access to learning materials allowed by others parts of their copyright laws (for example, in copyright exceptions and limitations) and to allow the exercise of other fundamental rights and freedoms. Where such flexibilities in TPM provisions do not exist, amendments should be considered. Even in Morocco, where an FTA with the United States requires Moroccan law to prohibit circumvention of TPMs, the Moroccan legislators have managed to incorporate an exception to the TPM anti-circumvention provision for certain non-profit entities.

Parallel importation of copyright-protected goods from one country to another is also a potentially promising strategy for ensuring access to the lowest-cost learning materials available. Egypt is an example to follow in this respect, because its copyright law contains a provision permitting parallel imports from any country. And Senegal's legislation is to some extent laudable for permitting parallel imports from its seven neighbours in the eight-member UEMOA bloc of countries. In contrast, South Africa's provision explicitly outlining steps rights-holders can take to block parallel imports could pose a serious problem if used by rights-holders to block access to lower-cost learning materials from neighbouring countries.

African legislators can also show a commitment to learning materials access (and, in turn, to national educational development), by resisting pressure from local creative industry groups and certain developed world entities — pressure that is sometimes reinforced by African bodies such as the Francophone African intellectual property body OAPI — to extend the copyright term in their national laws beyond the international standard of the life of the author plus 50 years. While it is perhaps unrealistic to expect countries like Morocco, Senegal, Ghana and Mozambique to wind back the term of protection from their current length of life plus 70 years, other African countries that have not extended their term — including the ACA2K countries South Africa, Uganda, Kenya and Egypt — could work together with other developing nations to maintain the status quo. Several ACA2K study countries are influential developing world member states at WIPO, giving them a platform to promote,

among other things, maintenance of the standard 50-year term of protection in African nations. Indeed, the difficulty of recalibrating copyright terms to anything shorter than what is currently granted illustrates the importance of very carefully considering the economic, social and cultural impacts of any upward extension.

Some ACA2K countries have embraced the potential of compulsory licensing, which could be an example for other study countries to consider. Egypt's provisions permitting compulsory licences for educational purposes and for certain kinds of translations and Uganda's provision for compulsory licensing of certain translations and reproductions for purposes of teaching, scholarship or research, are important examples of how African nations can seek to realise educational/developmental goals through copyright law.

African lawmakers should also consider the potential developmental role that copyright tribunals can play. The ACA2K research in South Africa and Ghana suggested that the provision for a Copyright Tribunal in each of those two countries could potentially be central to mediation of the tension between protection for and access to, copyright-protected learning materials. In Ghana, a key intended function for the Tribunal, which has not yet been established, is intervention in disputes over royalty rates and licensing frameworks.

Development of an access-friendly blanket licence agreement between a collection society and a user body (such as a university) is an example of a practice that can be pursued by stakeholders regardless of the state of, or lack of, legislative reform. A blanket agreement seeks to standardise and systematise permissions to users, in return for standardised remuneration to rights-holders. This eliminates some uncertainty for both users and rights-holders, strikes a balance between the education rights of users and the economic rights of rights-holders and encourages compliance with and respect for the law.

At the University of Ghana, Legon, it was found that the blanket licensing systems being established potentially do not go beyond what is already allowed by the law and have little connection to the everyday realities of life on campus, where widespread photocopying of entire textbooks regularly occurs. However, the South African research found that the blanket licence agreement between the DALRO collection society and the University of Cape Town (UCT), while not perfect in terms of clarity, is reasonably well understood and complied with at UCT. Stakeholders in other African countries could benefit from scrutiny of the blanket agreements negotiated in Ghana, South Africa and elsewhere, so as to determine which, if any, elements could be relevant to development of blanket licences in their countries. It should be cautioned, however, that standard-form contracts modelled on South African (or, worse, European) precedents may not be appropriate for other countries. Context-specific solutions are needed.

As well as the provisions and practices just outlined, copyright policy stakeholders in African countries would do well to give consideration to entirely new types of provisions and practices. There are several innovative new approaches to copyright that study countries could be at the forefront of piloting. Indeed, some of the study countries would be ideal places to test new attitudes and approaches — not least because existing laws are not at present being enforced to any great extent in the study countries. In that context, being open-minded about alternative solutions could put Africa ahead of the curve in developing model copyright laws for the 21st century.

For instance, African nations could consider pioneering a system of compulsory periodic renewal of copyright, following an initial term of automatically granted copyright protection. Such a system would not go against the internationally mandated life-plus-50-years term of protection, but it would require a copyright-holder to renew copyright in a work several times during that 50-year period in order to keep

the copyrights. Such a system has been proposed as a way to ensure that works that are not actively commercially exploited by their rights-holders enter the public domain much more quickly.<sup>37</sup> As well, African legislators could consider introducing provisions whereby use of 'orphan works' under reasonable conditions could be allowed if the copyright-holder cannot be identified for negotiation of a voluntary licence.

Another idea, which does not require any legislative changes, is for stakeholders to establish registries of public domain works in order to assist users in knowing which works they can use, adapt or copy freely without rights-holder permission. Libraries or administrative agencies could be at the cutting edge of establishing these registries, building upon their pre-existing responsibilities towards protection of local knowledge and cultural expression. Exploiting print-on-demand technology is another extremely promising area that does not require legislative intervention and where at least one institution in Africa, the BA, is poised to become a global leader.

Support for locally produced, objective policy research also has the potential to energise national copyright policymaking environments, potentially opening up space for policy narratives, positions and models that improve access to learning materials. The ACA2K network has already documented, through its project monitoring framework, what appear to be the seeds of behaviour change in national policymaking environments in countries such as Ghana and Kenya. In both of these countries, members of the local ACA2K research teams have managed to make their research findings and recommendations known within high-level policy processes.

The ACA2K research suggests that countries with more local copyright expertise have a richer policy debate and therefore, the potential for a more access-friendly copyright environment. South Africa, for instance, is home to the continent's largest collection of copyright scholars and this is likely to have helped generate a policy environment that is, as discovered from this research, somewhat favourable to consideration of multiple viewpoints within the policymaking space. South Africa is home to several research centres and projects focusing on issues related to the intersections between intellectual property and knowledge access, including work at both UCT and the University of the Witwatersrand, two institutions connected to the ACA2K project. Egypt is also emerging as an anchor for African research in this field, with leadership from BA and American University in Cairo (AUC). AUC launched its Access to Knowledge for Development Center (A2K4D) in early 2010.<sup>38</sup>

It is essential to engage multi-disciplinary teams to tackle various facets of the issue of access to learning materials. There is an important role for academics from law, economics, information sciences and other disciplines, as well as practitioners such as librarians, lawyers, politicians, administrators, judges and more. Governments throughout Africa and their national and international supporters, would do well to increase investment in local policy research and grow the epistemic community of intellectual property researchers based in Africa.

Momentum for change towards more access-friendly national copyright environments can also come from institutions that are willing to challenge the boundaries of copyright law in order to enable access in clearly reasonable but perhaps technically illegal ways. For instance, the Egypt ACA2K research found evidence of Egyptian libraries providing access to materials to disabled users, regardless of the fact that Egyptian copyright law does not specifically provide exceptions for such access. And a Moroccan library official interviewed by the ACA2K Morocco team said he would be willing to convert

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<sup>37</sup> See, for instance, A Rens and L Lessig 'Forever minus a day: a consideration of copyright term extension in South Africa' (2006) 7 *Southern African Journal of Information and Communication* 22. Available at <http://link.wits.ac.za/journal/journal-07.html> [Accessed 1 April 2010].

<sup>38</sup> See AUC Access to Knowledge for Development Center (A2K4D). Available at <http://www.aucegypt.edu/academics/schools/BUS/A2K4D/Pages/Home.aspx> [Accessed 20 May 2010].

copyright-protected material into Braille for use by visually impaired users, in spite of the fact that the Moroccan law does not provide for permission-free adaptation of works. The Moroccan library official said he would be willing to take such a step because he did not anticipate any author objecting to adaptation of a work for the visually impaired.

Libraries and other institutions on the frontline of access provision could be given greater support to execute their mandates without fear of liability. This support could come in many different forms, from scholarly opinions to government statements to rights-holder endorsement. Judges, administrators and enforcement officials could also assist by taking account of reasonable practices in defining the boundaries of otherwise ambiguous legal concepts such as fair dealing, fair use and fair practice.

All stakeholders need to work together to continue to develop best practices within the context of the law as it presently exists in a given country, because access-enabling legal changes — as desirable as they may be — are unlikely in the immediate future in most African countries. And even if and when desired legal changes do occur, such changes alone will not change the environment. The ACA2K research has shown that the practices and behaviour that prevail in a copyright environment are often even more important than the laws themselves. Ultimately, the ACA2K research has found that copyright laws are, at best, unreliable access-enablers, regardless of the fact that copyright law is founded on the notion of the need to balance the economic interests of rights-holders with the access rights of users.

A valuable access-building practice for Africa is the promotion and utilisation of flexible approaches to the licensing and distribution of locally produced works. The Publishing and Alternative Licensing Model of Africa (PALM Africa) project has successfully supported publishing of three open access books, under Creative Commons (CC) open licences, by Fountain Publishers, a traditional publisher in Uganda.<sup>39</sup> In Egypt, the CC flexible copyright licences are also starting to gain exposure. In South Africa, the use of these licences has been ongoing since they were 'ported' into that country in 2005. Also, South Africa is home to the pioneering Free High School Science Texts open content curriculum project that uses the GNU Free Documentation Licence for all its works.<sup>40</sup> The ACA2K book itself is published by one of Africa's leading publishers, UCT Press, under a Creative Commons licence agreement. Adopting such models is not a rejection of the importance of copyright; on the contrary, open licensing is fundamentally premised on copyright protection, without which there would be no basis for a licence.

The ACA2K research has found that reforming copyright laws and practices should not be seen as a magic solution to the learning materials access problem. Multiple strategies are required and any strategy or practice that can directly reduce the cost of legal access must be tried. Educators can, for instance, offer free open access to their own research outputs through institutional repositories. And universities can form consortia to share the costs of subscriptions to electronic journals. One example of such a consortium is CARLIGH in Ghana, which was highlighted in the Ghana ACA2K research. South Africa also has a similar entity, the South African National Library and Information Consortium (SANLiC). Also, it is clear that African policymakers could increase support for local publishers, through, for instance, measures to decrease the costs of publishing inputs such as paper and printing machinery. And increased efforts can be made to promote girl-child and women's education materials access. And more resources could be invested in ICT infrastructure, training and exploitation. These are just a handful of examples of ideas which themselves are deserving of entire research projects.

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<sup>39</sup> See the PALM Africa blog at <http://blogs.uct.ac.za/blog/palm-africa> [Accessed 20 May 2010].

<sup>40</sup> See the Free High School Science Texts website at <http://www.fhsst.org/> [Accessed 20 May 2010].



### 5.3 Document Outputs

In addition to several presentations made by project members at public conferences/seminars (outlined above in Section 4.3), mostly in PowerPoint format (and available on the ACA2K website), the following are the project's document outputs:

#### 2008

##### *Initial Country Scans (internal, non-public)*

- preliminary identification by researchers in 5 countries of relevant secondary literature
- identification of copyright policies/laws/regulations and common law, with initial ideas around the country's incorporation of flexibilities relevant to learning materials
- preliminary identification of learning materials stakeholders in the 5 countries
- preliminary identification of copyright policy stakeholders in the 5 countries
- presented at January 2008 Methodology Workshop and thereafter made available online to project members in non-public 'ACA2K Team Space' section of ACA2K website, [www.aca2k.org](http://www.aca2k.org)

##### *Methodology*

- *Methodology guide* (English)
- *Methodology guide* (French)
- *Methodology guide* (Portuguese)
- *Methodology guide* (Arabic)

##### *Other*

- *Draft Gender Strategy (internal, non-public)*

#### 2009

##### *Research reports*

- *Country Report: Uganda* (English)
- *Country Report: Ghana* (English)
- *Country Report: Kenya* (English)
- *Country Report: Mozambique* (English)
- *Country Report: Mozambique* (Portuguese)
- *Country Report: Morocco* (French)
- *Country Report: South Africa* (English)
- *Country Report: Egypt* (English)
- *Country Report: Senegal* (French)

##### *Advocacy documents*

- *Geneva Briefing Paper 1* (English)
- *Geneva Briefing Paper 2* (English)
- *Geneva Briefing Paper 2* (French)
- *Geneva Briefing Paper 3* (English)
- *Executive Policy Brief: Uganda* (English)
- *Executive Policy Brief: Ghana* (English)
- *Executive Policy Brief: Mozambique* (English)
- *Executive Policy Brief: Mozambique* (Portuguese)
- *Executive Policy Brief: Morocco* (French)
- *Executive Policy Brief: South Africa* (English)
- *Executive Policy Brief: Egypt* (English)
- *Executive Policy Brief: Senegal* (French)

##### *IQsensato-ACA2K official Statements at WIPO, Geneva*

- May 2009: WIPO Standing Committee on Copyright and Related Rights (SCCR)
- November 2009: WIPO Committee on Development and Intellectual Property (CDIP)
- December 2009: WIPO Standing Committee on Copyright and Related Rights (SCCR)



#### *Scholarly publications*

- three chapters written for *Global information society watch 2009*
- article for *African Journal of Information and Communication (AJIC)*

#### *Other*

- *Draft ACA2K Network Strategy for Influence & Change (internal, non-public)*
- *ACA2K & Gender Guidelines (internal, non-public)*

### **2010**

#### *Research reports*

- *Country Report: Morocco (English)*
- *Country Report: Senegal (English)*
- *Comparative Review of Research Findings (English)*
- *Comparative Review of Research Findings (French)*
- *Comparative Review of Research Findings (Portuguese)*

#### *Advocacy documents*

- *Executive Policy Brief: Uganda (French)*
- *Executive Policy Brief: Ghana (French)*
- *Executive Policy Brief: Mozambique (French)*
- *Executive Policy Brief: Morocco (English)*
- *Executive Policy Brief: South Africa (French)*
- *Executive Policy Brief: Senegal (English)*
- *Executive Policy Brief: Egypt (French)*

#### *Scholarly publication*

- ACA2K English-language book published by UCT Press, Cape Town

#### *Other*

- ACA2K Gender Report, by Salome Omamo (internal, non-public)
- ACA2K OM Monitoring Report, by Chris Morris (internal, non-public)
- ACA2K Future Scoping Study, by Jeremy de Beer and Tobias Schonwetter (internal, non-public)

### **2011**

#### *ACA2K publication*

- French-language version of ACA2K book, published by Laval University Press, Quebec City (forthcoming, 2011)

#### *ACA2K-related publication*

- *Access to knowledge for education -- in simple language*, by The African Commons Project (TACP), Johannesburg (forthcoming, 2011), based on South African ACA2K research findings and recommendation

#### *Scholarly publication*

- Schonwetter, T and Ncube, C 'New hope for Africa? copyright and access to knowledge in the digital age' (2011) 13:3 *info* 64-74, Emerald Group Publishing.

## 6. Project Outcomes

### 6.1 Capacity Outcomes

#### ***Institutions***

The following institutions have, through involvement in ACA2K, increased their capacity to work on copyright-related issues from a developmental, access-based perspective:

- Universidade Eduardo Mondlane (UEM) Law School, Maputo: the Mozambique research team was composed of three researchers who teach at the UEM Law School, and the ACA2K project received enthusiastic support from the Dean of the UEM Law School, who has a strong interest in intellectual property issues and participated in the August 2009 Maputo ACA2K National Policy Dialogue Seminar. The Mozambique ACA2K team leader, Fernando dos Santos of UEM, is now doing research for Open A.I.R.
- Kenya Copyright Board, Nairobi: the Kenya ACA2K team leader, Dr. Marisella Ouma is Executive Director of the Kenya Copyright Board, and Dr. Ouma is now doing more copyright-related research, for Open A.I.R.
- University of Cape Town (UCT) Intellectual Property Law and Policy Research Unit, Cape Town: Two of the ACA2K South Africa researchers are affiliated to this Unit, and, significantly, the follow-on project to ACA2K, called Open African Innovation Research and Training (Open A.I.R.), is being managed by this Unit.
- Wits University, Johannesburg: the Wits University Copyright Services Librarian, who served as ACA2K Dissemination and Policy Engagement Advisor, was able to broaden the reach of her work through blogging on the ACA2K website, and the Wits LINK Centre, which managed ACA2K, was able to broaden its expertise, and network of collaborators, in the intellectual property field. Two LINK Centre members, Luci Abrahams and Chris Armstrong, are now working on the ACA2K follow-on project, Open A.I.R.

#### ***Researcher Collaborations***

ACA2K's researchers managed to generate many meaningful research collaborations amongst themselves through the project, and there is reason to believe that these collaborations built the capacity of the individual researchers to engage in development-oriented copyright research in the future:

- Egypt, Morocco and Senegal ACA2K teams: Egyptian team member Dr. Bassem Awad supported research report finalisation by the Morocco and Senegal teams in 2009; Senegal ACA2K team: collaboration between Assane Faye/Mamadou Seye of Université de Bambey in Bambey and Nogaye Ndour of Université de Cheikh Anta Diop in Dakar
- South Africa ACA2K team: collaboration between Tobias Schonwetter/Caroline Ncube of University of Cape Town and Pria Chetty of Chetty Law, Johannesburg
- Morocco ACA2K team: collaboration between Said Aghrib/Abdelmalek El Ouazzani of Marrakech and Noufissa El Moujaddidi in Rabat
- Uganda ACA2K team: collaboration between Ronald Kakungulu of Makerere U, Dick Kawooya of University of Wisconsin-Milwaukee and Jeroline Akubu of the Uganda Law Reform Commission (ULRC)
- Ghana ACA2K team: collaboration between Poku Adusei of University of Ghana, Legon, Parliamentarian Kwame Anyimadu-Antwi (who also lectures at KNUST in Kumasi) and Accra-based lawyer Naana Halm

#### ***Dissemination Collaborations***

ACA2K's project members also initiated several dissemination collaborations amongst themselves through the project:

- Egypt, Morocco and Senegal ACA2K teams: Egyptian team member Dr. Bassem Awad and Assane Faye of the ACA2K Senegal team, attended, and presented at, the October 2009 Morocco National Policy Dialogue Seminar in Marrakech;
- Kenya and Uganda ACA2K teams: Uganda team member Jeroline Akubu attended Kenya the National Policy Dialogue Seminar in Nairobi in May 2009; Kenyan team member Dr. Marisella Ouma attended, and presented at, the Uganda National Policy Dialogue Seminar in Kampala in June 2009;
- Ghana and Kenya ACA2K teams: Kenyan team member Prof. Ben Sihanya attended, and presented at, the Ghana National Policy Dialogue Seminar in June 2009 in Accra;
- Mozambique and South Africa ACA2K teams: Mozambican team member Fernando dos Santos attended, and presented at, the South Africa Policy Dialogue Seminars in November 2009 (in Cape Town) and December 2009 (in Johannesburg)
- Policy & Dissemination Advisor Denise Nicholson of Wits University, Johannesburg, collaborated with:
  - the ACA2K Kenya team by presenting at the ACA2K Kenya National Policy Dialogue Seminar in Nairobi in May 2009
  - the ACA2K Mozambique team by presenting at the ACA2K Mozambique National Policy Dialogue Seminar in Maputo in August 2009
  - the ACA2K South Africa team by presenting at the ACA2K South African Policy Dialogue Seminars in November 2009 (in Cape Town) and December 2009 (in Johannesburg)
  - Senegal ACA2K team member Assane Faye through a joint presentation at 2009 IFLA Milan meeting

### **Network-Building**

Another outcome, connected to the 'Researcher Collaborations' and 'Dissemination Collaborations' just outlined, was the gradual emergence of a substantive, vibrant ACA2K network, ie, the emergence of a collective made up of individuals/teams based in a dozen countries who, as the project progressed, showed an increased willingness and desire to be identified with, to represent, and to speak on behalf of, the collective (the ACA2K network). For example, most of the 'Dissemination Collaborations' listed above were initiated by the network members themselves, not by project management, and thus these collaborations are evidence of the existence of a substantive network.

Project management faced many hurdles in fostering the conditions within which this collective spirit could emerge, and it was by no means guaranteed that such a spirit *would* emerge. In the first 15 months of the project, from October 2007 to December 2008, the focus of project management was on contracting and organising the network, and getting the eight country research teams on roughly the same timeline in terms of research data collection and analysis. The positive 'tipping point' for the network seems to have occurred in the project's 16<sup>th</sup> month, at the January 2009 Cairo Mid-Project Workshop, where, on the fourth and final day of the meeting, during discussion of the dissemination and policy engagement activities that needed to take place in the study countries later in 2009 via National Policy Dialogue Seminars, country teams spontaneously began to make requests to have members of other country teams attend their National Policy Dialogue Seminars.

A key lesson one can draw from this experience is that network-building is a slow and incremental process: a vibrant ACA2K network only began to emerge roughly 1.5 years into the project. And thus, a project seeking a substantive research network as one of its outcomes, and seeking to harness the energy of the network -- once it has become substantive and vibrant -- in support of other project

outcomes (eg, dissemination and policy engagement outcomes), needs to be a relatively long-term project, of, say, 2.5 or more years in duration.

## 6.2 Outcomes Generated by Deployment of the Research

### ***At national level***

At national level in the study countries, dissemination and policy engagement based on the research results appear to have generated positive outcomes. For example, in Ghana, the Attorney-General attended, and spoke at the ACA2K National Policy Dialogue Seminar in Accra in June 2009, and the Attorney-General consulted with the ACA2K team regarding the potential relevance of the ACA2K findings to copyright legislative amendments in the country. In Kenya, ACA2K research findings and recommendations were given prominence at a January 2010 workshop convened by the Kenya Copyright Board (KCB) to discuss planned amendments to the Kenyan Copyright Act. In Mozambique, the Minister of Culture praised the ACA2K project, and spoke of the importance of the ACA2K findings, during a national seminar in Maputo in December 2010 on copyright and cultural industries. The seminar, funded by UNESCO, had attendees drawn from academic institutions, government, the Mozambican Copyright Office, the national collective management society, police, customs and cultural associations.

### ***At international level***

The strongest outcomes at international level from dissemination and policy engagement based on the ACA2K research appear to have been at WIPO in Geneva -- as a result of the aforementioned ACA2K collaboration with Geneva-based research organisation IQsensato. Among other things:

- a number of official national delegates from countries in the African Group at WIPO approached the ACA2K/IQsensato delegation on the sidelines of the meeting of the WIPO Standing Committee on Copyright and Related Rights (SCCR) in May 2009 to find out how to connect with the ACA2K project and to ask for a briefing;
- a few days before the May 2009 SCCR meeting, a top WIPO Director showed keen interest in ACA2K at a seminar hosted by ACA2K/IQsensato to introduce ACA2K to the Geneva copyright community;
- ACA2K was referred to in a November 2009 statement by the Electronic Frontier Foundation (EFF) to the WIPO Committee on Development and Intellectual Property (CDIP), [http://www.eff.org/files/filenode/dev\\_agenda/EFF-CDIP-STATEMENT-111609.pdf](http://www.eff.org/files/filenode/dev_agenda/EFF-CDIP-STATEMENT-111609.pdf), a significant outcome for ACA2K because ACA2K had not interacted directly with the EFF, which is an influential civil society player at WIPO; and
- on the sidelines of the December 2009 SCCR meeting, several African Group delegates met with ACA2K representatives to be briefed on the ACA2K findings.

As well, the ACA2K project drew spontaneous expressions of interest from officials and academics in Africa. In Zimbabwe, interest in collaboration was expressed by a government official who is a copyright expert, and a researcher in Cameroon also contacted the project to see if there were possibilities of conducting an ACA2K-style country study in that country at some point in the future.

Another important outcome at international level occurred in 2009, when the German government-funded capacity-building agency InWEnt (Capacity Building International) made contact with IDRC and ACA2K with the idea of learning from ACA2K and possibly collaborating with ACA2K on InWEnt's capacity-building programme entitled 'Train for Trade, Component 3 - Intellectual Property: Harnessing the Knowledge Commons for Open Innovation in Africa.' This contact between InWEnt (now part of GIZ), IDRC and ACA2K bore fruit in 2010 with GIZ's agreement to support, with funding from the German government (BMZ), the follow-on project to ACA2K, called Open African Innovation Research and Training (Open A.I.R.). Open A.I.R., launched in May 2011, and being managed by the

University of Cape Town IP Law and Policy Research Unit, is being funded by IDRC and BMZ, and will run until the end of 2013. The majority of Open A.I.R.'s members were also part of ACA2K.

### **Outcomes in Canada**

Two significant outcomes emerged at the University of Ottawa:

- After the *ACA2K Methodology guide* was completed in April 2008, the University of Ottawa, where ACA2K Principal Investigator Prof. Jeremy de Beer is in the Faculty of Law, was able to launch a course on Global IP Policy and Social Justice that included coverage of the theme of access to knowledge for development (A2K4D) and drew on ACA2K's methodological work, among other sources.
- Also at the University of Ottawa, law students from Zimbabwe and Zambia have deployed the ACA2K methodological framework in their research on copyright environments in those two countries.

## **6.4 Outcome Mapping (OM) Lessons Learned**

The March 2010 final OM monitoring report for ACA2K was based on OM Consultant Chris Morris's close reading of the OM outcome monitoring journals that had been prepared in 2009-10 by the eight country teams and by the Research Manager.

### **Country-level OM**

At country level, the OM Consultant's report focussed on what was seen to be the project's broadest, longest-term objective (OM outcome challenge), as follows:

- African countries have enabled copyright environments that increase access to knowledge.

The specific OM monitoring findings at country level in relation to specific stakeholders (boundary partners) are internal (non-public) and thus cannot be included in this report, but certain general country-level OM lessons learned, as detailed in the OM Consultant's report, can be provided here. The OM lessons learned at country-level included:

- Within some of the study countries, it was found that there were a number of individuals and institutions dealing with copyright matters without knowing much about each other's work. Helping to bring these pockets of expertise together (which some country teams were able to do to some extent) would be an important outcome and seems to be a key to achieving meaningful change most effectively.
- Often policymakers, despite their positions of great responsibility, were found to be unaware of the exceptions and limitations provided within their national copyright law, specifically those exceptions and limitations pertaining to libraries and archives.
- When the law and the available exceptions and limitations (especially the meaning of the concept of the public domain and its effects) were explained, stakeholders expressed an appreciation of the importance of understanding the law and the exceptions and limitations.
- A brief but simple explanation of the law to a stakeholder is very effective in creating awareness.
- It would have been valuable to organise student lectures at universities in each of the study countries, on the ACA2K project, in order to present a summary of the research findings.
- It was important to involve the relevant Ministry as early as possible in the project, and to keep the Ministry informed of the project's progress.
- Some stakeholders (boundary partners) required regular direct contact and continuous sensitisation to the ACA2K initiative. The Country Report and other projects documentation were crucial tools in this respect.



- A broader, generalised campaign for access to learning materials is required in most of the study countries.
- There was a need to intensify the media coverage of the project in each country, beyond the ACA2K National Policy Dialogue Seminar (which is when most country teams got their media coverage) so as to keep the momentum going and thus extend the lifespan of the project.
- ACA2K country teams that included government employees or Parliamentarians – eg, Kenya, Mozambique, Ghana, Uganda – had perhaps managed to build the strongest channel of interaction with the policymaking space, thus enhancing the potential for eventual achievement of the long-term outcome challenge (as stated above) in these countries.

### ***Project/network-level OM***

The OM Consultant also looked at the Research Manager's outcome journals -- journals on the project/network members and on the network's targetted international stakeholders (boundary partners) -- and the Consultant's report concluded that:

- the ACA2K Principal Investigators and country research teams had demonstrated a willingness to collaborate effectively with each other and to see themselves as champions for the project/network, which contributed to the ACA2K project achieving significant visibility in international and African copyright policymaking communities;
- a project's Principal Investigators can become a strong unit even if not sharing the same physical space or even country, provided it is a particularly committed/energetic group of people.
- though very costly, occasional large physical gatherings of members of a research network are necessary as they can achieve positive collaboration synergies, eg, substantial collaborative spirit was built among project members from disparate countries at the ACA2K Methodology Workshop in Johannesburg in January 2008 and the ACA2K Mid-Project Workshop in Cairo in January 2009;
- the energy generated by large gatherings of members of a research network can continue for many months after the meeting;
- there is a sincere hunger among the official international copyright community – eg, at WIPO -- for rigorous, African-based research into national copyright environments;
- if a project makes its presence felt consistently and professionally at consecutive high-level meetings, even seemingly difficult-to-navigate environments such as WIPO standing committees can become somewhat accessible;
- the fact that ACA2K's research agenda found its way into a university curriculum, at the University of Ottawa, helped make the ACA2K approach to copyright more 'mainstreamed'; and
- there is a need to ensure that the research agenda/project that emerges out of ACA2K is able to maintain the good linkages with the international A2K community that were built by ACA2K.

Finally, the OM Consultant's report concluded that:

Outcome Mapping assisted ACA2K project participants to focus their monitoring and reporting on progressive changes: progressive changes in the actions and relationships of the boundary partners with whom they tried to work directly. OM assisted project participants in measuring results that were clearly within the sphere of influence of project activities. [...] project members engaged in the process of identifying and agreeing on the anticipated or hoped-for changes in behaviour of their key boundary partners. Ongoing monitoring allowed the project members to document the (often subtle) changes in behaviour that had potential to contribute towards meeting of the outcome challenges identified by the project. Comparison across the eight countries has also been possible via the OM framework. Capturing the upstream achievements



and changes in behaviour of boundary partners has allowed a “the story of change” to emerge, lessons to be drawn, and higher-level learning to be encouraged.<sup>41</sup>

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<sup>41</sup> Morris, C *African Copyright and Access to Knowledge (ACA2K) project: the story of change* (2010) OM Consultant’s internal (non-public) report, March 2010.

## 7. Overall Assessment and Recommendation

### 7.1 Assessment <sup>42</sup>

The project's principal contribution to the state of knowledge in this field is the rich empirical evidence generated by actually assessing the impact of copyright 'on the ground' rather than merely 'on the books.' To [the project's] knowledge, such a pan-continental, multi-disciplinary endeavour had never previously been undertaken in Africa.

Preliminary observation of the outcomes that this new evidence has contributed to at national, regional and international levels suggest that this project should be only part of the beginning, not the end, of engagement with the issues at the intersection between copyright and access to learning materials in Africa. Already, this empirical research has found its way into the high-level proceedings of WIPO committees on copyright and development issues in Geneva, as well into African fora examining intellectual property issues in the development context.

Collaborative relationships have been formed between ACA2K and stakeholders on all sides of the copyright debate, including rights-holder and user groups, not to mention research centres, independent think tanks and non-governmental organisations (NGOs). The methods and findings of this project are already being taught in at least one university curriculum as a model for others to follow. National seminars have been held in every ACA2K study country, leading to meaningful engagement with lawmakers, policymakers and the stakeholders most directly impacted by tertiary educational access issues. The media have shown interest, with coverage of ACA2K finding its way into national and international outlets, including television, radio, print and online.

This project has succeeded in achieving its objectives of increasing research capacity in Africa on matters of copyright and learning materials access, refining methodological practices for this kind of research, growing the body of published evidence in this area and building researchers' awareness of the need to interrogate copyright in relation to educational development objectives and outcomes.

And perhaps most importantly, it is apparent that the team that has been involved in executing this project has cross-fertilised to create a solid and sustainable human network of people who are passionate about these issues. The mission to create a network of African researchers empowered not only to study the impact of copyright environments on access to learning materials, but also to use the evidence generated to assist copyright stakeholders to participate in evidence-based copyright policymaking aimed at increasing access to knowledge, has apparently succeeded. Some progress has thus been made towards the ultimate vision of people in Africa maximising access to knowledge by influencing positive changes in copyright environments nationally and across the continent.

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<sup>42</sup> The first five paragraphs of Section 7.1 of this report, on the assessment of the ACA2K project, were previously published in almost identical form in Chapter 10 of Armstrong, C, De Beer, J, Kawooya, D, Prabhala, A and Schonwetter, T (eds) *Access to knowledge in Africa: the role copyright* (2010) UCT Press, Cape Town, in association with IDRC, Shuttleworth Foundation and Wits University LINK Centre. Available at <http://www.aca2k.org/research.html> [Accessed 30 September 2011]; and in Armstrong, C, De Beer, J, Kawooya, D, Prabhala, A and Schonwetter, T *ACA2K comparative review of research findings: copyright and access to knowledge in eight African countries* (2010) ACA2K project, IDRC, Shuttleworth Foundation and Wits University LINK Centre. Available (in English, French and Portuguese) at <http://www.aca2k.org/research.html> [Accessed 30 September 2011].

In terms of Canadian involvement in the project, the contribution of the University of Ottawa, through the work of Prof. Jeremy de Beer (who served one of the project's four Principal Investigators) was critical to its success – through contributions to the following:

- development of the project proposal;
- guiding of the methodological discussions at the Methodology Workshop and helping finalise the *Methodology guide*;
- facilitating use of the ACA2K methodology by students at the University of Ottawa and in a new curriculum on developmental approaches to intellectual property;
- supporting data collection in the study countries through visits to research teams;
- interacting with, and keeping informed, key management personnel at IDRC headquarters in Ottawa, regarding the project and its progress;
- participating in the writing/polishing of the three ACA2K WIPO Briefing Papers in 2009;
- drafting of the opening and concluding chapters of the ACA2K book, and polishing the country chapters;
- recruiting University of Ottawa students to do fact-checking, copy-editing and proof-reading for both the English-language and French-language versions of the ACA2K book;
- representing ACA2K at a WIPO impact assessment meeting; and
- supporting the Research Manager in liaising with the two publishers of the ACA2K book, along with the IDRC Publisher, and representatives of the Shuttleworth Foundation and the Wits LINK Centre.

Prof. de Beer was part of an highly capable and committed team of Principal Investigators for the project, with the other three being Dr. Dick Kawooya of the University of Wisconsin-Milwaukee (UWM), independent researcher Achal Prabhala in Bangalore and Dr. Tobias Schonwetter at the University of Cape Town (UCT). As mentioned above in the 'Outcomes' section, under 'Outcome Mapping (OM) Lessons Learned,' this team of four was effective and cohesive.

Another significant Canadian component of the project was provided by the IDRC itself. Not only was the IDRC's funding commitment extensive, but so to was its commitment to ensuring that the ACA2K project participants were given opportunity to network and collaborate with each other; with the IDRC offices/processes in Ottawa, Dakar, Cairo, Nairobi and Johannesburg; with other IDRC Acacia networks and IDRC networks outside Africa; and with African national, African regional and international seminars, conferences and official processes relevant to the network.

Just as the University of Ottawa's effective contribution was made possible by the dynamism of the international Principal Investigator team, so too was the IDRC's contribution situated within a strong international partnership – a partnership that brought together the IDRC, the Shuttleworth Foundation (the other project funder), and the University of the Witwatersrand (Wits University) in Johannesburg (the grant recipient and managing institution). Both the Shuttleworth Foundation and Wits University were steadfast in their commitment to the project, and at Wits, the commitment was, of necessity, at multiple levels: the Deputy Vice-Chancellors, Wits Legal, Wits Copyright Services, Wits Enterprise and the centre managing the project, the Wits LINK Centre.

Also essential to the project's success were the skills and dedication of the eight country research teams. For most of the researchers, the project was a highly challenging one, both conceptually and methodologically.

Most importantly, professionalism was displayed by all members of the project team (as listed at the beginning of this report) and that is what allowed the project to deliver on its objectives and ensure that the funding provided was money well spent.

## 7.2 Recommendation

In order to build upon the outcomes achieved by this project, it is recommended that efforts be made to ensure future collaborations among the ACA2K network participants. The time, energy and expense that went into creating the ACA2K network were considerable, and while the ACA2K outcomes are significant and valuable in and of themselves, some of the outcomes risk being diluted if there is not a continuation of the network in some form.

Thus, the launching of the Open African Innovation Research and Training (Open A.I.R.) network in May 2011 is welcomed. Funded by the IDRC and Germany's GIZ/BMZ, and being managed by the University of Cape Town (UCT), the Open A.I.R. network, as presently constituted, includes all four of the people who served as Principal Investigators for ACA2K, as well as personnel from the Wits University LINK Centre (which managed ACA2K) and members of six of the eight ACA2K country research teams, ie, ACA2K researchers from Egypt, Ghana, Uganda, Kenya, Mozambique and South Africa have been recruited into the Open A.I.R. network. Additional African capacity has been drawn into Open A.I.R., through the inclusion of additional researchers in Egypt, Uganda, Mozambique and South Africa, and researchers from additional countries: Tunisia, Nigeria, Ethiopia and Botswana.

Open A.I.R.'s research case studies are probing the extent to which IP systems can be harnessed or improved to support African collaborative peer production and open development. The Open A.I.R. studies fall under six thematic areas:

- Copyrights: Empowering Collaborators in Creative Industries
- Patents: Open Innovation for Cleaner Energy Technologies
- Trademarks: Collective Agricultural Branding Strategies
- Implementing the WIPO Development Agenda
- The Traditional Knowledge Commons
- Sharing the Benefits of Publicly Funded Research

The Open A.I.R. case studies, due for completion in mid-2012, are being augmented by foresight research into the future of IP in Africa, and will feed into the outreach and capacity-building activities by the project with African policymakers, entrepreneurs, innovators and other stakeholders.

Open A.I.R.'s research agenda – covering copyright, patents and trademarks – is broader than ACA2K's focus (which was only on copyright), but there is continuity from ACA2K to Open A.I.R. because Open A.I.R. is, like ACA2K, approaching its research into intellectual property from an under-explored, developmental perspective – in an effort to fill important research gaps.

Open A.I.R.'s Canadian linkages are strong. In addition to a substantial IDRC funding allocation to the project, the University of Ottawa's Centre for Law, Technology and Society is working directly with the University of Cape Town on project management -- and two University of Ottawa academics, Prof. Jeremy de Beer and Dr. Chidi Oguamanam, are on the Open A.I.R. project Steering Committee and participating in the case study research. Three other Canadian universities are connected to Open A.I.R.:

- Poku Adusei, a PhD candidate at McGill, is conducting Open A.I.R. research in Ghana;
- Teshager Dagne, a PhD candidate at Dalhousie, is collaborating with Dr. Oguamanam of the University of Ottawa on a multi-country African study for Open A.I.R.; and
- Dr. Sara Bannerman at McMaster is an advisor to an Open A.I.R. case study looking at the WIPO Development Agenda.

The Open A.I.R. network also includes Prof. Nagla Rizk of American University Cairo (AUC), an internationally-acclaimed Egyptian academic who did her PhD in Canada at McMaster. Prof. Rizk,

who has a long-standing connection with the IDRC through numerous other initiatives, is serving on the Open A.I.R. Steering Committee and participating in two Open A.I.R. copyright case studies: an Egyptian study, and a joint Egyptian/Tunisian study. Also on the Open A.I.R. Steering Committee is Sisule Musungu, the Kenyan lawyer and intellectual property expert based in Geneva and Nairobi. It was Musungu's IQsensato research organisation that was instrumental in facilitating ACA2K's successful interactions with WIPO standing committees (CDIP and SCCR) in 2009.

The Open A.I.R. project, scheduled to run until the end of 2013, can thus perhaps be regarded as one of ACA2K's most significant outcomes: an expanded African network, with a broadened research agenda, is seeking to harness -- and augment -- the individual and institutional capacities identified and strengthened during the ACA2K project between 2007 and 2011.

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